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JOHN F. DAVIS, CLERK

APPENDIX

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1969~~ 1970

No. ~~25~~ 18

In The Matter of The Application of

MARTIN ROBERT STOLAR,
Petitioner

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

PETITION FOR CERTIORARI FILED MARCH 31, 1969
CERTIORARI GRANTED OCTOBER 13, 1969

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Chronology of Important Dates

Jan. 3, 1969	Petitioner's application for admission to the practice of law; application, affidavit and certificate of law school; questionnaire for registration; questionnaire for admission filed with the Supreme Court of Ohio.
Jan. 23, 1969	Personal interview of the petitioner by the Committee.
Feb. 7, 1969	Letter from Chairman of the Committee on Admissions of the Columbus Bar Association to Petitioner.
Feb. 10, 1969	Letter from Petitioner to Chairman of the Committee on Admissions of the Columbus Bar Association.
Feb. 18, 1969	Recommendation of the Committee on Admissions of the Columbus Bar Association submitted to the Clerk of the Supreme Court of Ohio.
Feb. 24, 1969	Counsel's memorandum on behalf of Petitioner submitted to the Supreme Court of Ohio.
Feb. 27, 1969	Order and Memorandum Opinion of the Supreme Court of Ohio.

Petitioner's Application for Admission

BEFORE THE SUPREME COURT OF OHIO

In the Matter of the Application for Registration of
MARTIN ROBERT STOLAR
As a Candidate for Admission to the Practice of Law

APPLICATION and CERTIFICATE

I hereby make application for registration as a candidate for admission to the practice of law. In conformity with the Rule of the Court, I am submitting (1) a certificate executed by the dean of the law school, (2) an authenticated transcript evidencing my bachelor's degree, (3) the answered character questionnaire in duplicate, (4) a fingerprint identification card and (5) the registration fee of twenty dollars.

I have read the rule pertaining to admission to the practice of law and understand that approval of my application is subject to the favorable recommendation of the local Committee on Applicants for Admission to the Practice of Law.

/s/ Martin Robert Stolar

Certificate of Registration

I CERTIFY, that Martin Robert Stolar, whose permanent residence is 18 College Complex Circle, Rochester (Monroe County), New York, began the study of law on September 13, 1965 at New York University College of Law.

Dated this 30th day of December, 1968.

/s/ Robert B. McKay
Dean

Application, Affidavit and Certificate of Law School

In the Matter of the Application of
MARTIN ROBERT STOLAR
For Admission to the Bar Examination

I hereby make application for admission to the bar examination to be held March 3, 1969. In conformity with the Rule of the Court, I am submitting (1) my affidavit, (2) a certificate from the law school, (3) two copies of the questionnaire updating the information on character and moral fitness and (4) the forty dollar fee.

_____
Signature of Applicant

18 College Complex
Rochester, N.Y.
Permanent Residence Address

Apt. 1409, 999 Caldwell Pl.
Columbus, O.
Temporary Address

Affidavit

State of Ohio, Franklin County, ss:

Martin Robert Stolar, being duly sworn, says: that he is a citizen of the United States, that he is 25 years of age and that during the course of his legal education he has read and studied the Canons of Professional Ethics approved by this Court.

_____

Sworn to before me and subscribed in my presence this day of 19 .

_____
Notary Public

Application, Affidavit and Certificate of Law School

Certificate of Law School

I certify that Martin Robert Stolar, an applicant for admission to the bar examination to be held on March 3, 1969, has been awarded an LL.B. Degree prior to the examination. I further certify that he has received instruction in legal ethics and that he is a person of good moral character who has sufficient knowledge and ability to discharge the duties of an attorney at law.

/s/ Robert B. McKay

Dean of New York University
Law School

Note: Should any applicant fail to complete degree requirements in time to qualify for the examination the Dean should immediately advise the Office of the Clerk of the Supreme Court.

Questionnaire for Registration
Before the Supreme Court of Ohio
In the Matter of the Application of
Martin Robert Stolar
For Registration as a Law Student

EXPLANATION AND INSTRUCTIONS: This questionnaire will provide The Supreme Court of Ohio and its Committees on Admissions to the Bar with information needed to determine your qualifications for registration as a law student. The information obtained may be used as a guide to further investigation. Answer all questions fully, truthfully and accurately.

Two completed typewritten (except for Item 16) copies of this questionnaire are to be submitted to the Clerk of The Supreme Court within 120 days after entering law school. If the space for any answer is inadequate, complete your answer on a separate attached sheet specifying the number of the question. Be sure to affix your signature to each additional sheet.

Only applications verified by the affidavit at the end of the questionnaire will be considered.

1. (a) Your full name *Martin* *Robert* *Stolar*
   First Middle Last
   (b) Have you ever used or been known by any other name? *No*
   If so, state in full each name used or by which you have been known, and briefly give the reasons therefor.
   (c) Has your name ever legally been changed? *No*
   If so, attached a certified copy of the order.
2. (a) Date of birth *April 2, 1943*
   (b) Place of birth *Syracuse, New York*
   (c) If you were born in a foreign country, state what

age you came to the United States.

(d) If you claim citizenship other than by birth in the United States, attach a certified copy of certificate of naturalization or other documentary evidence supporting your claim.

3. (a) Legal residence (permanent) address *18 College Complex, Rochester, N.Y.*

(b) Current residence address *Apt. 1409 999 Caldwell Pl., Columbus, Ohio*

(c) List every home address you have had since you were 14 years of age, giving the exact address of each, together with the month and year of the beginning and ending of each residence. (Exclude temporary addresses, such as those for summer vacation and during military service.)

Period	Street and Number	City and State	With Whom
Age 14-22 4/57 - 10/65	*37 Highland Parkway*	*Rochester, N.Y.*	*Parents*
Age 22-25 10/65 - 8/68	*18 College Complex Cir.*	*Rochester, N.Y.*	*Parents*

(d) Present business address, if any.....

4. (a) Are you married or single? *Single*

(b) Have you ever been married? *No*

(c) If you are married, state the date of marriage and wife's maiden name or husband's name.

(d) Have you ever been divorced?..... If so, give title and number of case, name of court granting decree, date of decree, by whom and on what grounds divorce was obtained.

5. (a) Father's name *Sigmund Stolar* Present residence *18 College Complex, Roch. N.Y.*

Mother's name *Jessie Stolar* Present residence *(same)*

Birthplace of father *New York City*

Birthplace of mother *Cranberry, New Jersey*

Questionnaire for Registration

Past and present occupations or professions. (Be specific.)

Father *Salesman for West Disinfecting Company, Business Director for JYM&WA in Rochester, Salesman for PAECO, Inc. (present)*

Mother *Bookkeeper for Serv-Rite, Inc. in Rochester (present)*

(b) Give a complete list of your brothers and sisters, including their present addresses and occupations.

Name	Address	Occupation
Michael Stolar	*184 College Complex, Rochester*	*Electrician*
Jeffrey Stolar	*284 Colony Manor Dr., Rochester*	*Salesman*

6. (a) List all junior and senior high schools which you have attended.

Name and Location of School	Period of Attendance
Monroe High School Rochester	From *Sept* 1956 to June 1961

(b) List all colleges and universities which you have attended.

Name and Location	Day, Evening, Extension or Summer Attendance	Period of Attendance	Degrees and Date Received
University of Rochester	*Day*	From Sept 1961 to June 1965	*A.B. June, '65*

(c) State the name of the law school to which you have been admitted or where you are currently enrolled. *New York University School of Law*

7. Have you ever been placed on probation, suspended, expelled or requested to terminate your enrollment by any high school, college, university, law school, or other similar institution? *No* If your answer is "Yes," give the name and address of the institution, the date and full particulars.

8. (a) Have you ever served in the armed forces of the United States? *No*

(b) Have you ever been a defendant in any courts-martial? *No*

(c) If your answer to (b) is "Yes," give the date, the nature of the charge, the facts pertaining to the case and the disposition thereof.

(d) What type of discharge or other separation document did you receive upon termination of your military service? *No*

(e) Have you ever been rejected for service in any branch of the armed forces of the United States? *No* If so, state the reason, date and other pertinent facts.

9. Give a complete statement of all employment, including businesses of your own in which you have been engaged, since you became eighteen years of age.

(all in Roch. unless otherwise noted)

Name and Address of Employer or Business	Period of Employment	Reason for Leaving
JYM&WA	From 6 1960 to 9 1960	*summer work*
Diamond Fish Fry	From 9 1960 to 5 1961	*store closed*
Coca-Cola Bottling Corp.	From 6 1961 to 9 1961	*summer work*
Coca-Cola Bottling Corp.	From 6 1962 to 9 1962	*summer work*
Cilman & Cilman	From 10 1961 to 4 1962	*school workload*
Rochester Cafe Services	From 9 1962 to 6 1965	*graduated from college*
Tennis Club of Rochester	From 6 1964 to 9 1964	*summer work*
Edward J. Regan, Esq.	From 6 1965 to 9 1965	*summer work (Bronx, N.Y.)*
Ballon, Stoll & Shyman, Esqs.	From 6 1966 to 9 1966	*summer work (New York)*
New York University	From 6 1966 to 12 1966	*summer work school workload (two different jobs)*
Multer, Nova & Seymour, Esqs.	From 7 1967 to 9 1967	*summer work (New York City)*
United States Government Office of Economic Opportunity VISTA	From 8 1968 to *present*	*(Columbus, O.)*

10. (a) Have you ever been required to furnish a bond in connection with any office or employment? *No*

Questionnaire for Registration

If your answer is "Yes," specify the type of office or position for which you were bonded, amount of the bond, name of the bonding company or other surety, and state whether anyone ever sought to recover upon your bond or to cancel it.

(b) Have you ever been refused a fidelity or other type bond? *No* If so, explain fully.

11. (a) Have you ever ben discharged or asked to resign by any employer? *No* If your answer is "Yes," to this question, state the circumstances.

(b) Have you ever held or applied for a license, or certificate, the procurement of which required proof of good character? *Yes* If so, state, as to each license, the date it was granted, the name and address of the authority issuing it, whether any license or certificate has been refused or revoked, and whether you have been reprimanded, censured, or otherwise disciplined as the holder of a license. *I am a member of the New York Bar, having been admitted by the Appellate Division, Fourth Department, Rochester, New York on December 2, 1968. I have never been reprimanded, censured or otherwise disciplined as a holder of this certificate.*

12. State whether you have been, or presently are:

(a) a party to any action or legal proceeding, including civil, criminal, quasi-criminal, administrative, or any proceeding in the juvenile court *Yes — minor traffic offenses*

(b) addicted to the use of narcotics, drugs, or intoxicating liquors *No*

(c) treated for mental illness *No*

(d) adjudged incompetent by any court *No*

(e) committed to or confined in any mental or correctional institution *No*

(f) adjudicated a bankrupt or placed under a receivership *No*

(g) a member of any organization which advocates the overthrow of the government of the United States by force *I will not answer this question under my right as guaranteed by the Fifth Amendment of the U.S. Constitution.*

If your answer to any section of the above question is "Yes," set forth the facts in detail, designating by letter the portion of the question to which you refer. Include names of cases and dates of all court proceedings, the disposition made thereof, and the name and address of the court in which the record may be found.

(a) Conviction, upon a plea of guilty, to a charge of speeding

1. In Municipal Court of Rochester, N.Y. in October, 1961; sentence was suspended.

2. In Justice Court of Batavia, N.Y. 10/13/64 —$10 fine

13. List the names and addresses of all clubs, societies or organizations of which you are or have been a member.
(a) *I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution.*

14. Are there any unsatisfied judgments against you? *No*
If so, list the names and addresses of the holders and the amount due on each judgment.

15. Name five persons (exclusive of relatives) who have known you well for at least five years. (Provide current addresses for, and the occupation of each reference.)
Jonathan Alpert 2724 Brownsboro Rd. Louisville, Ky. Law Student

Questionnaire for Registration

Marcia Alpert 2724 Brownsboro Rd. Louisville, Ky. Computer Programmer

Robert A. Quigley 79 Greenwich Ave. New York, N.Y. LIFE Magazine Circulation Manager

Harris H. Rusitzky 1577 Monroe Ave. Rochester, N.Y. Corporation Owner and President (Food Service)

Sam Phillips Council of Social Agencies Rochester, N.Y. Professional Social Worker

16. State in your own handwriting in a paragraph not to exceed 100 words your reasons for desiring to be an attorney at law.

My main reason for desiring to be an attorney is that the law is an ever-changing field—it continually develops and does not remain static or stagnant. Consequently it differs from a great many other fields into which I could have gone as a career. Secondanly, [sic] *the law can be an effective tool for molding the social change so necessary today. Working with and within the law to produce such change is, for me, the most important contribution I can make to the society in which I live.*

17. (a) Has your conduct ever been questioned, to your knowledge, with reference to the unauthorized practice of law? *No*

(b) Have you ever been employed or otherwise connected with any person, firm or corporation whose conduct was questioned, to your knowledge, on the subject of unauthorized practice of law while you were so employed or connected? *No*

If your answer is "Yes" to either part of this question, explain the facts in detail.

18. If you have ever held any public office either by election or by appointment, state the nature thereof, when and where. *None*

Questionnaire for Registration

19. When and where did you last vote in a public election? *Nov, 1964 Rochester, N.Y.*

20. Have you ever been suspended, disqualified or disciplined as a member of any profession; have you ever been removed from any office, public or private, because of conduct reflecting upon your character; or have any charges been made or filed or proceedings instituted against you? *No* If your answer is "Yes," state the facts in detail.

AUTHORIZATION AND RELEASE

I, *Martin Robert Stolar*, born at *Syracuse* *New York*, *on*
Name City State
April 2, 1943, having filed an application for admission to
Date
the bar of Ohio, consent to have an investigation made as to my moral character, professional reputation and fitness for the practice of law and such information as may be received reported to the admitting authority. I agree to give any further information which may be required in reference to my past record.

I also authorize and request, every person, firm, company, corporation, governmental agency, court, association or institution having control of any documents, records and other information pertaining to me, to furnish to the Supreme Court of Ohio any such information, including documents, records, bar association files regarding charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent data, and to permit the Supreme Court of Ohio or any of its agents or representatives to inspect and make copies of such documents, records, and other information.

I specifically authorize the Supreme Court to obtain any information from my official record on file with Local Board Number *75* of the Selective Service System, located in the City of *Rochester*, State of *New York*; and hereby consent

to and authorize the release of such information by the Selective Service System.

I hereby request and authorize the Department of the ..... to furnish to the Supreme Court of
(Army, Navy, Air Force)
Ohio, the record of each period of my service therein, and to furnish the character of service rendered for each period. My serial number was ..... *applicable*

I hereby release, discharge, exonerate the Supreme Court of Ohio, its agents and repesentatives, the admission agency of the above jurisdiction, its agents and representatives, and any person so furnishing information from any and all liability of every nature and kind arising out of the furnishing or inspection of such documents, records, and other information or the investigation made by the Supreme Court of Ohio.

I have read the foregoing document and have answered all questions fully and frankly. The answers are complete and true of my own knowledge.

State of *Ohio*
ss.
County of *Franklin*

/s/ Martin Robert Stolar
Signature of Applicant

Subscribed and sworn to before me this *23* day of *Dec.* A.D., 19*68*

/s/ Charles A. Williams
Notary Public

Questionnaire for Admission to Examination

Before the Supreme Court of Ohio
In the Matter of the Application of
Martin Robert Stolar
For Admission to the Bar Examination

EXPLANATION AND INSTRUCTIONS

This questionnaire when answered, together with the questionnaire which you answered for registration as a law student, will provide the Supreme Court of Ohio and its Committees on Admission to the Practice of Law with information to determine your qualifications for taking the bar examination. The information obtained may be used as a guide to further investigation. Answer all questions fully, truthfully and accurately.

Two completed typewritten copies of this questionnaire are to be submitted to the Clerk of the Supreme Court at least 90 days prior to the date of examination. Only those applications submitted with the affidavit at the end of the questionnaire will be considered.

1. Your full name *Martin* (First) *Robert* (Middle) *Stolar* (Last)
   (a) Date of birth *April 2, 1943*
   (b) Present home address *18 College Complex Cir. Rochester, N.Y.*
   (c) Present residence address *Apt. 1409 999 Caldwell Pl. Columbus, Ohio*
   (d) Home phone *253-7058* Office phone *221-6581*
2. Have you been naturalized since registering as a law student? *No*
   (a) Date.....Court.....
   Forward naturalization certificate to the Clerk of the

Questionnaire for Admission to Examination

Supreme Court for inspection. It will be returned promptly.

3. Law school which you are attending *New York University School of Law*
   (a) Other previously attended *none*
   (b) Degree awarded or to be received *J.D. Degree received June, 1968*

4. Were you ever dropped, suspended or expelled from any law school? *No*
   (a) If so, explain fully:.....

5. Employment since registering as a law student:
   Employment record on registration form is complete and up to date

   Employer Address

6. Since registering as a law student have you ever been a party to or otherwise involved in any legal proceeding, civil or criminal? *No*
   (a) If so, explain fully:.....

7. List the names and addresses of all clubs, societies or organizations of which you are or have been a member since registering as a law student.
   I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution.

8. References: List three citizens of the community in which you have resided for the past five years and one member of the faculty of the law school or schools which you have attended to whom inquiry may be made concerning your character and fitness for admission to the practice of law in Ohio.

Questionnaire for Admission to Examination

Name	Address
Veronika Kraft	*140 W. 57th Street New York, N.Y.*
Robert A. Quigley	*79 Greenwich Avenue New York, N.Y.*
Harris H. Rusitzky	*1577 Monroe Avenue Rochester, N.Y.*
Prof. Homer Kripke	*NYU Law School 40 Washington Sq. New York, N.Y.*

Martin Robert Stolar
Applicant

STATE OF OHIO)
)SS.
COUNTY OF *FRANKLIN*)

Martin Robert Stolar, being duly sworn, states that he is the applicant named in the above questionnaire and says: I have read the foregoing questions and, to my own knowledge, have answered them fully, correctly and truthfully.

/s/ MARTIN ROBERT STOLAR
Applicant

Sworn to before me and subscribed in my presence this *23* day of *December*, 1968.

/s/ CHARLES A. WILLIAMS
Notary Public
Franklin County, Ohio

My commission expires 6-25-72.

Questionnaire on Application for Admission to the Bar of the State of New York

YOU MUST ANSWER ALL QUESTIONS FULLY.

1. Please state:

(a) your full name, and if name ever was changed, give former name, date and reason therefor.

Martin Robert Stolar

(b) age, and date of birth.

Born April 2, 1943. Twenty-five years old as of this date.

(c) place of birth.

Syracuse, New York

(d) now living with *Sigmund and Jessie Stolar*
Relationship? *Father and Mother*
at No. *18 College Complex Circle*
in the *City* of *Rochester* N.Y. *14623*
Zip Code

(e) length of actual residence in the State of New York, prior to the date of this application.

From birth until August 28, 1965.

(f) whether married or single.

Single.

If married, when, where and to whom.

(g) Has any marriage to which you were a party been terminated by divorce or annulment, or affected by a separation? If so, state fully in answer to question 16 all pertinent, material facts.

Never been married.

(h) Are you a citizen of the United States?

Yes

Questionnaire on Application for Admission to the Bar of the State of New York

(i) If naturalized, state when and where.

(j) If citizenship is claimed through the naturalization of a parent, set forth the facts.

2. If you have not always resided at the address stated at 1(d) state when and where you resided elsewhere.

4/43-10/46 425 Glenwood Ave., Syracuse, N.Y.
10/46- 6/65 37 Highland Parkway, Rochester, N.Y.
6/65- 9/65 365 W. 25th St., New York, N.Y.
9/65- 6/66 33 Washington Sq. W., New York, N.Y.
6/66- 9/66 118 E. 19th St., New York, N.Y.
9/66- 8/68 55 E. 10th St., New York, N.Y.
9/68-present 999 Caldwell Pl. Apt. 1409, Columbus, Ohio 43203

3. State the name, residence, birthplace and occupation of your parents, if living. If either parent be dead, so state, and give name, last place of residence and occupation.

Father: Sigmond Stolar Age 57 Occupation: 18 College Complex Cir. Salesman Rochester, N.Y. 14623 Birthplace: New York, N.Y.

Mother: Jessie Stolar Age 52 Occupation: (same as father) Bookkeeper Birthplace: Cranberry, N.J.

4. State all the schools below college grade which you have attended and between what dates. If you are a high school graduate, so state, giving name of school, date of graduation, and name of principal at graduation.

Elementary School: School #24, Rochester, N.Y. 9/48-6/56

Questionnaire on Application for Admission to the Bar of the State of New York

High School: Monroe High School, Rochester, N.Y. 9/56-6/61

Principal at Graduation: Mary A. Sheehan.

5. State whether you attended college? If so, state what college and when, specifying dates. What academic degree, if any, have you received? If you did not receive a degree, state the reasons. State what sessions you attended, whether full or part time, day, evening, extension or summer attendance.

   I attended the University of Rochester from 9/61 until 6/65, when I graduated with an A.B. I was a full time day student and majored in political science.

6. State whether you attended a law school? If so, state what school and when, specifying dates. What degrees in law, if any, have you received? If you did not receive a degree, state the reason. State what sessions you attended, whether full or part time, day, evening, extension or summer attendance.

   I attended, as a full time day student, New York University School of Law from 9/65-6/68, when I graduated with a J.D. Degree.

7. State whether you have ever been dropped, suspended, or expelled from any school, college, law school, or other similar institution? *No.*
   If your answer be yes, state the school, the cause and the circumstances.

8. State how many times you have taken the New York State Bar Examinations, and date of your final examination?

   I have taken the Bar Examination only once: July 18 and July 19, 1968.

9. State whether you have been employed by another in

any occupation, business, or profesison other than the law? If so,

Yes

(a) Give name and address of each employer, the business, the position you occupied and the month and year of the beginning and ending of each employment.

(1) Jewish Young Men's & Women's Ass'n. Summer Camp—Kitchen Asst. Summer 1960

(2) Diamond Fish Fry—Retail Fish Sales—Counter clerk—4/61-12/61

(3) JYM&WA—Coat checker—9/61-12/61

(4) Rochester Coca-Cola Bottling Corp.—laborer Summer 1961

(5) Driver's Asst. Summer 1962

(6) Cilman & Cilman—Retail Meat Sales—Bill Collection and Delivery—Fall, 1962

(7) Rochester Cafeteria Services, Inc.—Retail Prepared Food Sales—worked as counter and grillman 9/62-6/65

(8) New York University—Desk Clerk—Summer, 1966

(9) —Language Laboratory Ass't. Summer and Fall, 1966

(10) Tennis Club of Rochester—Snack Bar Manager—Summer, 1967

(b) Were you so employed at the same time that you were attending school, college or law school?

The jobs with the following numbers were held while attending college: (3), (6), (7). During law school job number (9) was held.

10. State whether you have been discharged by any employer? If so, state the cause and the circumstances.

Questionnaire on Application for Admission to the Bar of the State of New York

I have never been discharged by any employer.

11. State whether you have been engaged on your own account in any occupation, business, or profession other than the law? If so,

No

(a) Give in detail the nature and location thereof and the month and year of the beginning and ending of your engagement.

(b) if a partnership, give the names and addresses of all partners.

(c) state whether or not you were so engaged at the time that you were attending school, college or law school.

12. State the law offices, including the law department of any corporation, with which you have been connected, with address of each, nature of your connection and services, and the month and year of the beginning and ending thereof.

(1) Edward S. Regan Esq.
4806 White Plains Rd. — *I was clerk and typist*
Bronx, N.Y. — *from 6/65-9/65*

(2) Ballon, Stoll and Shyman, Esqs.
1450 Broadway — *I was law clerk from*
New York, N.Y. — *6/66-9/66*

(3) Multer, Nova & Seymour
120 Broadway — *I was law clerk from*
New York, N.Y. — *7/67-9/67*

13. State whether you have ever applied for admission to practice as an attorney or counselor in any court in any state or country other than the State of New York? If so, state specifically the place and disposition made of the application. If your application was granted, state whether you were admitted, giving the name of the court by which admitted, the date and place of such

admission, the period of practice, and the office addresses where you have practiced, and attorneys or firms with whom associated.
No application ever made.

14. State whether you have been reprimanded, censured, disciplined, suspended or disbarred as an attorney or counselor at law, solicitor or barrister, and have any charges ever been preferred against you, and if so, with what result?
Never

15. State whether you have ever previously applied for admission to the bar of the State of New York? If so, where, when, and with what result?
Never previously applied.

16. State whether you have been
    (a) a party to, or otherwise involved in, any legal proceeding, either civil or criminal? If so, state the date, place, court, and judgment rendered.
    I have never been such a party.
    (b) called as a witness or testified in any legal proceeding. If so, state facts fully.
    I have never been called as a witness.
    (c) charged with a crime or arrested. If so, state facts fully.
    I have never been charged with a crime.
    (d) summoned for a violation of any law, corporate ordinance, or regulation of any department of a municipal corporation. If so, state facts fully.
    I received a ticket for speeding on the N.Y. Thruway on 10/11/64. The Justice Court in Batavia, N.Y. convicted me upon a plea of guilty, on 10/13/64 and disposed of the case with a $10.00 fine. I also was convicted of a traffic offense (speeding) in the City of Rochester in the Fall of 1966 and

Questionnaire on Application for Admission to the Bar of the State of New York

sentence was suspended upon a guilty plea. The exact records here are lost to me.

17. State whether there are any favorable or unfavorable incidents in your life, whether at school, college, law school, business, or otherwise, not called for by the questions answered herein or disclosed in your answer thereto? If so, state the facts fully.
I can remember no unfavorable incidents. Favorable incidents include a number of scholastic awards throughout my schooling including my election as Administrative Director of the NYU Law School Moot Court Board. While in Law School I was awarded a Resident Fellowship by N.Y.U. and served as a graduate advisor in an Undergraduate Dormitory. One final favorable incident was my acceptance into and service in VISTA—a Volunteer In Service To America as part of the overall "War on Poverty" from the Office of Economic Opportunity.

18. State whether you have participated in activities of a public or patriotic nature or in philanthropic, religious, or social services? If so, state the facts fully.
I was a Cub Scout and Boy Scout and Explorer Scout during elementary and high school.
I also participated fully in my Temple's religious education programs until I went to college.
In addition, my time spent as a VISTA is a service of the above described nature.

19. Do you believe in the principles underlying the form of government of the United States?
Yes.

20. State whether you have been or are a member of any party or organization engaged in propagating or pledged to effect changes in the form of government provided for by the United States Constitution, or in

advancing the interests of a foreign country? If so, state the facts fully.

No.

21. Can you conscientiously, and do you, affirm, without any mental reservation, that you have been and are loyal to the government of the United States?

Yes.

22. Give the names and addresses of persons, other than those who have furnished character affidavits, to whom you refer as to your character, and state how long you have known each.

(1) Robert A. Quigley, 79 Greenwich Ave., New York, N.Y. 11 years

(2) Mr. and Mrs. Jonathan Alpert, 2724 Brownshore Rd., Louisville, Ky. 8 years

(3) Mr. and Mrs. Harry Malley, 83 Highland Pkwy. Rochester, N.Y. 20 years

(4) Mr. Sam Phillips, 151 Alaimo Drive, Rochester, N.Y. 25 years

23. State whether you have had military service? (If so, give date of entry into and discharge from service and state whether you were honorably discharged therefrom.)

I have had no military service.

24. (a) Have you studied the Canons of Ethics adopted by the American Bar Association?

Yes.

(b) Do you unconditionally subscribe to the same?

Yes.

(c) Will you conscientiously endeavor to conform your professional conduct to them?

Yes.

25. State fully the various reasons for your desire to adopt the practice of the law as a profession.

Early in my college years, when I first began to think of a life's work, I sought out the law chiefly because it

was not a static field. As I matured I saw that the law not only changed as it developed but it was capable of producing social change.

In addition, the practice of law would give me a chance to become knowledgable [sic] ***in many other fields—a kind of Renaissance-man profession, I had, and still have, no desire to channel all my life's work into one specialty and prefer the flexibility which the legal profession offers.***

26. State in a general way your plans for the future in the legal profession if you are approved by the Character Committee and admitted by the Court.

My immediate plans revolve around the area of poverty law which has been exposed to me through VISTA. I would like to work for Legal Aid or apply for a Smith Fellowship when my VISTA period expires.

Beyond this, I have plans to open my own office as a general practitioner and eventually specialize as a criminal lawyer.

Dated this *19th* day of *November*, 1968.

Signature of the Applicant MARTIN ROBERT STOLAR

State of New York:)
County of *Monroe*)ss.
City of *Rochester*)

Martin R. Stolar, being duly sworn, deposes and says: I am the applicant herein and have read the foregoing questions and have fully, truthfully and accurately answered the same. The foregoing answers and statements are true of my own knowledge, except as stated to be made upon information and belief, and as to such answers and statements I believe them to be true.

Signature of Applicant MARTIN R. STOLAR

Sworn to before me this *13* day
of *November*, 1968
/s/ [signature illegible]
Notary Public or Comm. of Deeds.

Report of Committee on Applicants for Admission to the Practice of Law

Report and Memorandum of J. Richard Lumpe

1. How long have you been a member of the local Bar Association? *six years*
2. Do you know the applicant personally? *no* If so, for how long?
3. Are you personally acquainted with the character references given by the applicant? *no*
   If so, what is their reputation in the community?
4. Has your inquiry revealed any questionable conduct which would adversely affect consideration of this application? *see attached statement* If so, what was the nature of such conduct?
5. In your opinion does this applicant possess the high standards of character required for admission to the practice of law? *see attached statement* If your answer is negative, explain in detail.
6. What is your recommendation relative to the applicant's registration as a candidate for admission to the practice of law? *I recommend that he not be registered at this time based on the fact that a complete investigation cannot be made at this time. See reasons set forth in the attached statement.*

Date *January 23, 1969*

Address *37 West Broad St., Columbus*

/s/ J. Richard Lumpe

NOTE: The Court's Rule on Admission to the Practice of Law requires that two members of the local Committee interview each applicant.

Report of Committee on Applicants for Admission to the Practice of Law

Report and Memorandum of J. Richard Lumpe

On January 23, 1969, the undersigned interviewed the applicant pursuant to the Rules of the Supreme Court of Ohio for applications for the practice of law. Richard Snodgrass, Attorney at Law, a member of the Admissions Committee, was also present for the interview.

It was noted that Mr. Stolar had refused to answer questions 12g and 13 on the Applicant's Questionnaire and question 7 on the Applicant's Questionnaire for Bar Examination for the following stated reason, "I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution."

Mr. Snodgrass and myself advised Mr. Stolar of the consequences of his refusal to answer these questions. After receiving this advice and stating he understood the matter, Mr. Stolar still refused to answer the above listed questions. His reason for refusing to answer was based on the premise that the questions were not pertinent to his moral and character fitness as an applicant. His principles and personal convictions would not allow him to answer these questions.

Based on my investigation, I find Mr. Stolar to be a very learned person and a very pleasant person, but I cannot recommend him for admission due to the fact he places himself above the rules of the Court and feels that he cannot abide by them when they run afoul of his personal convictions. I also cannot recommend him for admission since I was unable to fully complete the necessary investigation into his moral and character fitness due to his refusal to allow a complete investigation to be made.

/s/ J. Richard Limpe
37 West Broad Street
Columbus, Ohio
221-6755

Report of Committee on Applicants for Admission to the Practice of Law

Report and Memorandum of Richard Snodgrass

1. How long have you been a member of the local Bar Association? *Almost 2 years*
2. Do you know the applicant personally? *No* If so, for how long?
3. Are you personally acquainted with the character references given by the applicant? *No*
   If so, what is their reputation in the community?
4. Has your inquiry revealed any questionable conduct which would adversely affect consideration of this application? *See attached statement.* If so, what was the nature of such conduct?
5. In your opinion does this applicant possess the high standards of character required for admission to the practice of law? *Yes* If your answer is negative, explain in detail
6. What is your recommendation relative to the applicant's registration as a candidate for admission to the practice of law? *See attached statement.*

Date *January 27, 1969*

Address *37 W. Broad St., Columbus, Ohio*

/s/ RICHARD SNODGRASS

NOTE: The Court's Rule on Admission to the Practice of Law requires that two members of the local Committee interview each applicant.

J. Richard Lumpe and I interviewed Mr. Stolar on Thursday, January 23, 1969.

I found Mr. Stolar to be honest and forthright. His statements evidenced also a certain commitment to principle for its own sake, an unusually great amount of social awareness, and a degree of self-interest not reprehensible. On the

basis of the interview and the background actually revealed in Mr. Stolar's applications I have no reluctance to recommend Mr. Stolar for admission to the practice of law.

My recommendation is qualified, however, in that I can recommend him only if the Committee as a whole is willing to recommend his admission despite his refusal, with full notice of the possible consequences, to answer questions on the applications touching on his present and former organizational membership.

Two questions on each application Mr. Stolar, relying on the Fifth Amendment, refused to answer, on the ground that such questions go to matters not properly within the subject matter of such an inquiry. He rejected the argument that the Court, an agency of the state and of which he is to be a servant, has a right to inquire into such matters and to receive his full cooperation in doing so. He did state in response to direct questions that he is not now and has never been a member of the Communist Party, of any socialist party, or of the Students for a Democratic Society, and stated that he has signed the standard U.S. Army pre-induction security oath, which has reference to the "Attorney General's List".

Mr. Stolar was fully advised of the possible consequences of refusing to answer within the context of the *Schwere* and *Konigsberg* cases and the possible position of the Committee and of the Ohio Supreme Court that admission would and could lawfully be denied because of his refusal to answer and cooperate in the investigation. The issue then would seem to be whether the Committee and the Court are willing to honor Mr. Stolar's claimed rights above their own.

/s/ Richard Snodgrass
37 West Broad Street
Columbus, Ohio
228-1511

RS/a

Letter from Chairman to Petitioner dated February 7, 1969

February 7, 1969

Mr. Martin Robert Stolar
999 Caldwell Place
Apartment 1409
Columbus, Ohio

Dear Mr. Stolar:

The Admissions Committee of the Columbus Bar Association has considered your application for admission to the Ohio Bar examination. The committee has voted to deny your application unless by February 21, 1969, you answer questions 12 (g) and 13 of applicant's questionnaire for registration as a law student and question 7 of applicant's questionnaire for admission to bar examination.

Upon receipt of the answers to these questions the investigating committee will further consider your application.

Very truly yours,

WILLIAM H. SCHNEIDER
Chairman
Admissions to the Bar Committee

WHS:lml
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Letter from Petitioner to Chairman
Dated February 10, 1969

999 Caldwell Place
Apartment 1409
Columbus, O. 43203
February 10, 1969

William H. Schneider, Esq.
Columbus Bar Association
Committee on Admissions
40 South Third Street
Columbus, Ohio 43215

Dear Mr. Schneider:

I am in receipt of your letter of February 7, advising me of your Committee's denial of my application. Please be informed that I will not change my answers to questions 12 (g), 13 and 7 of the two application forms. This will be my position on February 21, 1969 also.

It is my belief that such questions are not within the proper scope of review for a Bar Association Committee on Admissions and in any event, the answers to such questions are protected by the First and Fifth Amendments of the United States Constitution.

I urge your committee to reconsider its decision. In the event that they do not, or do reconsider and reach the same conclusion, I would appreciate your informing me as soon as possible. In any event, I would like to know if I am entitled to a hearing before the Supreme Court and, if so, I request such a hearing with counsel.

Letter from Petitioner to Chairman
Dated February 10, 1969

I would appreciate your acting and responding with dispatch in this matter since the examination is but a short time away.

Very truly yours,
/s/ MARTIN R. STOLAR

MRS/s

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Recommendation of the Committee on Admissions of the Columbus Bar Association

February 18, 1969

Thomas Startzman, Esq.
Clerk of Supreme Court
State House Annex
Columbus, Ohio 43215

Re: Martin Robert Stolar

Dear Mr. Startzman:

The Admissions Committee of the Columbus Bar Association has considered the application of Martin Robert Stolar, 999 Caldwell Place, Apt. 1409, Columbus, Ohio, for admission to the Ohio bar examination. As indicated thereon Mr. Stolar has refused to answer questions 12(g) and 13 of applicant's questionnaire for registration as a law student and question 7 of applicant's questionnaire for admission to the bar examination.

The Admissions Committee voted to recommend to the Supreme Court that Mr. Stolar's application be denied unless Mr. Stolar answered the indicated questions. This information was transmitted to Mr. Stolar by certified mail and Mr. Stolar has indicated to the undersigned both by telephone and by letter that he will not answer the indicated questions. A copy of his letter is attached hereto. He further indicates that he did not wish the committee to wait until February 21, 1969, to forward this matter to you.

In view of Mr. Stolar's refusal to answer the questions above referred to, the Admissions Committee of the Colum-

Recommendation of the Committee on Admissions of the Columbus Bar Association

bus Bar Association recommends that Mr. Stolar's application for admission to the Ohio Bar examination be denied.

Very truly yours,

/s/ WILLIAM H. SCHNEIDER
Chairman
Admissions to the Bar Committee

WHS:lml

Enclosure:
(1) copy of letter
cc: Martin Robert Stolar

Memorandum of the Clerk of the Supreme Court of Ohio

TO: The Honorable Chief Justice and Justices

FROM: Thomas L. Startzman

SUBJECT: Adverse recommendation by Columbus Bar Association Admissions Committee on application of Martin R. Stolar for admission to the March, 1969 bar examination.

Mr. Stolar is a graduate of the New York University School of Law. He was admitted by examination to the New York bar in December, 1968. He is presently employed by the U. S. Office of Economic Opportunity, VISTA, and is assigned to the Columbus office.

All applicants for registration must compiete a questionnaire on which the following two questions, among others, appear:

"12. State whether you have been, or presently are:

(g) a member of any organization which advocates the overthrow of the government of the United States by force

13. List the names and addresses of all clubs, societies or organizations of which you are or have been a member."

Mr. Stolar answered both of the above questions in the following manner:

"I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution."

Memorandum of the Clerk of the Supreme Court of Ohio

At the personal interview conducted by two members of the Columbus Bar Association Admissions Committee, Mr. Stolar was advised that he would have to answer all the questions on the questionnaire and that if he did not do so they would be unable to recommend his admission because they would be unable to fully complete the necessary investigation. He still declined to answer the questions.

A meeting of the full admissions committee was held and it was determined that Mr. Stolar be advised that he would not receive a favorable recommendation unless he answered the questions on or before a specified date. He immediately replied that he would not answer the questions.

Copies of the reports of the two attorneys who conducted the personal interview and of the correspondence referred to above are attached hereto.

Mr. Stolar has indicated, in a pleasant manner, that he does intend to file an appeal to the U.S. Supreme Court if his application is denied.

2/19/69

Supplemental Memorandum of the Clerk of the Supreme Court of Ohio

Re: Application of Martin R. Stolar for admission to March examination.

As indicated in my previous memorandum to the court Mr. Stolar was admitted to the New York bar. At that time he was required to file an application with the admitting authority.

Attached hereto is one page of the questionnaire which Mr. Stolar filed in New York. The questions which will be of interest to the court are marked.

Thomas L. Startzman

Supplemental Memorandum of the Clerk of the Supreme Court of Ohio
[Attachment]

18. State whether you have participated in activities of a public or patriotic nature or in philanthropic, religious, or social services? If so, state the facts fully.

I was a Cub Scout and Boy Scout and Explorer Scout during Elementary and High School. I also participated fully in my Temple's religious education programs until I went to college.

In addition, my time spent as a VISTA is a service of the above described nature.

* 19. Do you believe in the principles underlying the form of government of the United States? Yes.

* 20. State whether you have been or are a member of any party or organization engaged in propagating or pledged to effect changes in the form of government provided for by the United States Constitution, or in advancing the interests of a foreign country? If so, state the facts fully. No.

* 21. Can you conscientiously, and do you, affirm, without any mental reservation, that you have been and are loyal to the government of the United States? Yes.

22. Give the names and addresses of persons, other than those who have furnished character affidavits, to whom you refer as to your character, and state how long you have known each.

(1) Robert A. Quigley, 79 Greenwich Ave., New York, N.Y. 11 years.

(2) Mr. and Mrs. Jonathan Alpert, 2724 Brownsboro Rd., Louisville, Ky. 8 years.

(3) Mr. and Mrs. Harry Malley, 83 Highland Pkwy., Rochester, N.Y. 20 years.

(4) Mr. Sam Phillips, 151 Alaimo Drive, Rochester, N.Y. 25 years.

Supplemental Memorandum of the Clerk of the Supreme Court of Ohio
[Attachment]

23. State whether you have had military service? (If so, give date of entry into and discharge from service and state whether you were honorably discharged therefrom.)
I have had no military service.

24. (a) Have you studied the Canons of Ethics adopted by the American Bar Association? Yes.
(b) Do you unconditionally subscribe to the same? Yes.
(c) Will you conscientiously endeavor to conform your professional conduct to them? Yes.

25. State fully the various reasons for your desire to adopt the practice of the law as a profession.
Early in my college years, when I first began to think of a life's work, I sought out the law chiefly because it was not a static field. As I matured I saw that the law not only changed as it developed but it was capable of producing social change.

In addition, the practice of law would give me a chance to become knowledgeable in many other fields—a kind of Renaissance like profession. I had, and still have, no desire to channel all my life's work into one specialty and prefer the flexibility which the legal profession offers.

Counsel's Memorandum on Behalf of Petitioner

February 24, 1969

Clerk
Supreme Court of Ohio
Columbus, Ohio

Re: Application of
MARTIN ROBERT STOLAR
to Take the Ohio Bar
Examination

Dear Sir:

The undersigned attorneys, Leonard B. Boudin of New York City, New York, and a member of the New York Bar, and William Boyland of Columbus, Ohio, and a member of the Ohio Bar, hereby request permission of this Court to appear on behalf of Martin Robert Stolar or as amicus curiae to present certain information set out below, which is relevant to the consideration of this matter. Would you kindly submit copies of this

letter and the other material enclosed herewith to the members of this Court?

Mr. Stolar has informed us that on February 7, 1969, he was notified by Mr. William H. Schneider, Chairman of the Admissions Committee of the Columbus Bar Association, that the Committee had decided to deny Mr. Stolar's application for permission to take the Ohio Bar Examination scheduled for March 4, 5 and 6, 1969 "unless by February 21, 1969, you [Mr. Stolar] answer questions 12(g) and 13 of the applicant's questionnaire for registration as a law student and question 7 of applicant's questionnaire for admission to bar examination".

Question 12(g) of the applicant's questionnaire for registration provides:

"State whether you have been, or presently are . . . (g) a member of any organization which advocates the overthrow of the government of the United States by force.

If your answer to any section of the above question is 'Yes,' set forth the facts in detail, designating by letter the portion of the question to which you refer. Include names of cases and dates of all court proceedings, the dispositions made thereof, and the name and address of the court in which the record may be found." [This latter portion of question 12 applies generally to subsections 12(a) - 12(g).]

Mr. Stolar answered question 12(g) by stating:

"I will not answer this under my right as guaranteed by the Fifth Amendment of the U. S. Constitution."

Questions 13 of the applicant's questionnaire for registration and 7 of the applicant's questionnaire for admission to bar examination are similar and in Mr. Stolar's case overlapping.

They provide respectively:

> "13. List the names and addresses of all clubs, societies or organizations of which you are or have been a member."
>
> "7. List the names and addresses of all clubs, societies or organizations of which you are or have been a member since registering as a law student."

Mr. Stolar's replies to both questions 13 and 7 were precisely the same as his answer to questions 12(g):

> "I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution."

In his letter of reply to the Committee, dated February 10, 1969 (annexed hereto as Exhibit A), Mr. Stolar stated:

> "Please be informed that I will not change my answers to questions 12(g), 13 and 7 of the two application forms. This will be my position on February 21, 1969 also.
>
> It is my belief that such questions are

> not within the proper scope of review for a Bar Association Committee on Admissions and in any event, the answers to such questions are protected by the First and Fifth Amendments of the United States Constitution."

Mr. Stolar has therefore grounded his refusal to answer the three questions involved on both the F irst and Fifth Amendments to the Constitution.

Recently a three-judge federal district court for the Southern District of New York, in an opinion by Circuit Judge Friendly dated February 17, 1969 (the full opinion of Judge Friendly and dissenting opinion of District Judge Motley, as yet not officially reported, are submitted herewith for the convenience of the Court) fully explored the import of the First Amendment to questions on an admission questionnaire for the New York Bar which

were almost identical to the questions Mr. Stolar refused to answer.

In the course of conducting its investigation of the character and fitness of applicants to the New York Bar, the Committees on Character and Fitness for the New York Appellate Divisions, First and Second Judicial Departments (covering New York City and surrounding suburban counties) included the following questions on their questionnaires:

> "26. Have you ever organized or helped to organize or become a member of or participated in any way whatsoever in the activities of any organization or group of persons which teaches (or taught) or advocates (or advocated) that the Government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence or any other unlawful means? If your answer is in the affirmative, state the facts below.

"28(a) Have you participated in activities of a public or patriotic nature or in philanthropic, religious, or social service? If so, state fully.

"(b) If you engaged in extracurricular activities (athletic, dramatic, debating, club, committee, administration, etc.) in college, indicate approximate amount of time spent and responsibility involved.

"29(a) Give names, addresses, objects and period of membership in each and every club, association, society or organization of which you are or have been a member other than those associated with and recognized by accredited schools and colleges."

Questions 28(a) and 29(a) were withdrawn by the Committees soon after the commencement of the three-judge court action.

Judge Friendly made the following observation regarding the withdrawal of these questions (see pp. 19-20 of Judge Friendly's opinion):

> "The questionnaires in use in the two departments have been the subject of recent changes which demonstrate that the Committees on Character and Fitness and the Justices of the Appellate Divisions are well aware of the need to bring them in line with developing concepts of First Amendment rights . . . After the commencement of the actions the Appellate Divisions deleted questions [28(a), (b) and 29(a)] which would have raised exceedingly serious problems under Shelton v. Tucker, 364 U.S. 479 (1960). See also Schneider v. Smith, 390 U.S. 17 (1968)." (Emphasis supplied)

The court stayed issuance of an injunction against the resumption of questions 28(a), (b) and 29(a) out of "[c]onsiderations of comity to respected fellow-judges" so that they might be "afforded a reasonable opportunity to reflect on our conclusions and perhaps take action that might obviate any occasion for an injunction." (See Judge Friendly's opinion at p. 27).

As to Question 26, the court held that it was unconstitutionally overbroad. Judge Friendly ruled:

> "The most obvious problems with Question 26 are the parenthetical past-tense verbs . . . The question should be corrected to clarify that the organization's teaching or advocacy of violent overthrow must have coincided in time with applicant's membership . . .
>
> . . . . . .
>
> "no Supreme Court decision has gone beyond sustaining inquiry into membership in organizations known to the member to advocate forceful or violent overthrow, or in the Communist Party whose advocacy is evidently deemed a matter of common knowledge. We are not disposed to sanction inquiries of greater scope." (at pp. 23-24)

The court ordered that Question 26 be "omitted or rephrased" within 90 days and that present applicants be permitted to "answer Question 26

only as limited to membership in organizations known to them to be then teaching or advocating overthrow of the Government by force or violence" (Judge Friendly's opinion at p. 27).

We respectfully submit that in light of Judge Friendly's reasoned opinion and the many recent Supreme Court decisions he and Judge Motley (dissenting) rely upon, Mr. Stolar was justified in refusing to answer the questions involved in this matter and that such refusal cannot, consistent with the First Amendment, be the basis for denying his application. Because of the time problem here with respect to the impending bar examination of March 4, 5 and 6 for which Mr. Stolar has been preparing, we respectfully request that

he be admitted to that examination so that he will not be penalized for asserting his First and Fifth Amendment rights.

The Court may desire Mr. Stolar to answer Question 12(g) as rephrased in accordance with Judge Friendly's opinion, but we think that this matter should be considered after the applicant has had an opportunity to take the examination. This would permit sufficient time for full briefing and argumentation on the applicant's claim of his Fifth Amendment rights (see Spevack v. Klein, 385 U.S. 511), an issue not involved in the case before Judge Friendly, and other First Amendment objections regarding the power to issue and the propriety of such a question, even as rephrased. These First Amendment ob-

jections were explored in Judge Motley's dissenting opinion and were the basis for the Judge's order convoking the three-judge court (see 291 F. Supp. 772). Another recent opinion fully developing these objections may be found in Haskett v. Washington, Civ. No. 2007-68 (D.D.C., Dec. 4, 1968, Skelley-Wright, Circuit Judge, concurring). (A copy of this decision, not yet officially reported, is submitted herewith for the convenience of the Court.)

We further request an opportunity for oral presentation regarding the issues raised in this matter, preferably this week. If upon the receipt of this letter the Court has already decided to deny Mr. Stolar's application,

we respectfully urge reconsideration in light of the above information and further presentation during oral argument.

Yours truly,

Leonard B. Boudin
Rabinowitz, Boudin & Standard
30 East 42nd Street
New York, N.Y. 10017
(212) OX. 7-6640

William Boyland
Campbell & Boyland
78 East State Street
Columbus, Ohio
(614) 224-6262

Attorneys for the Applicant

LBB:j

cc:

William H. Schneider, Esq.
Columbus Bar Association
Committee on Admissions
40 South Third Street
Columbus, Ohio 43215

EXHIBIT A

999 Caldwell Place
Apartment 1409
Columbus, O. 43203

February 10, 1969

William H. Schneider, Esq.
Columbus Bar Association
Committee on Admissions
40 South Third Street
Columbus, Ohio 43215

Dear Mr. Schneider:

I am in receipt of your letter of February 7, advising me of your Committee's denial of my application. Please be informed that I will not change my answers to questions 12(g), 13 and 7 of the two application forms. This will be my position on February 21, 1969 also.

It is my belief that such questions are not within the proper scope of review for a Bar Association Committee on Admissions and in any event, the answers to such questions are protected by the First and Fifth Amendments of the United States Constitution.

I urge your committee to reconsider its decision. In the event that they do not, or do reconsider and reach the same conclusion, I would appreciate your informing me as soon as possible. In any event,

I would like to know if I am entitled to a hearing before the Supreme Court and if so, I request such a hearing with counsel.

I would appreciate your acting and responding with dispatch in this matter since the examination is but a short time away.

Yours very truly,

Martin R. Stolar

MRS/s

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Order and Memorandum Opinion of the Supreme Court of Ohio

THE STATE OF OHIO,)
) 1969 TERM
City of Columbus.)

To wit: Thursday, February 27, 1969

In the Matter of the Application)
of Martin Robert Stolar to be) ENTRY
admitted to the March, 1969,)
Ohio Bar Examination.)

The Court coming now to consider the application of Martin Robert Stolar, the recommendation of the Committee on Admissions of the Columbus Bar Association and the memorandum and material submitted by counsel for Mr. Stolar, finds that oral argument in this matter is not necessary, and that the recommendation of the Committee on Admissions should be approved.

It is, therefore, ordered that the application of Martin Robert Stolar to be admitted to the March, 1969, Ohio Bar Examination be denied.

I, THOMAS L. STARTSMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. 49 Page.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 27th day of February, 1969.

THOMAS L. STARTZMAN, Clerk

By_____Deputy.

Supreme Court of the United States

No. 75 ----, *October Term, 19* 69

In the Matter of the Application of
Martin Robert Stolar,

Petitioner,

Order allowing certiorari. *Filed* **October 13 -----**, *19* **69.**

The petition herein for a writ of certiorari to the Supreme Court of the State of **Ohio** *is granted.* **The case is placed on the summary calendar and set for oral argument immediately following No. 53.**

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

COPY

MAR 31 1969

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1968

No. [redacted] #5518

In the Matter of the Application of
MARTIN ROBERT STOLAR
for Admission to the March, 1969,
Ohio Bar Examination

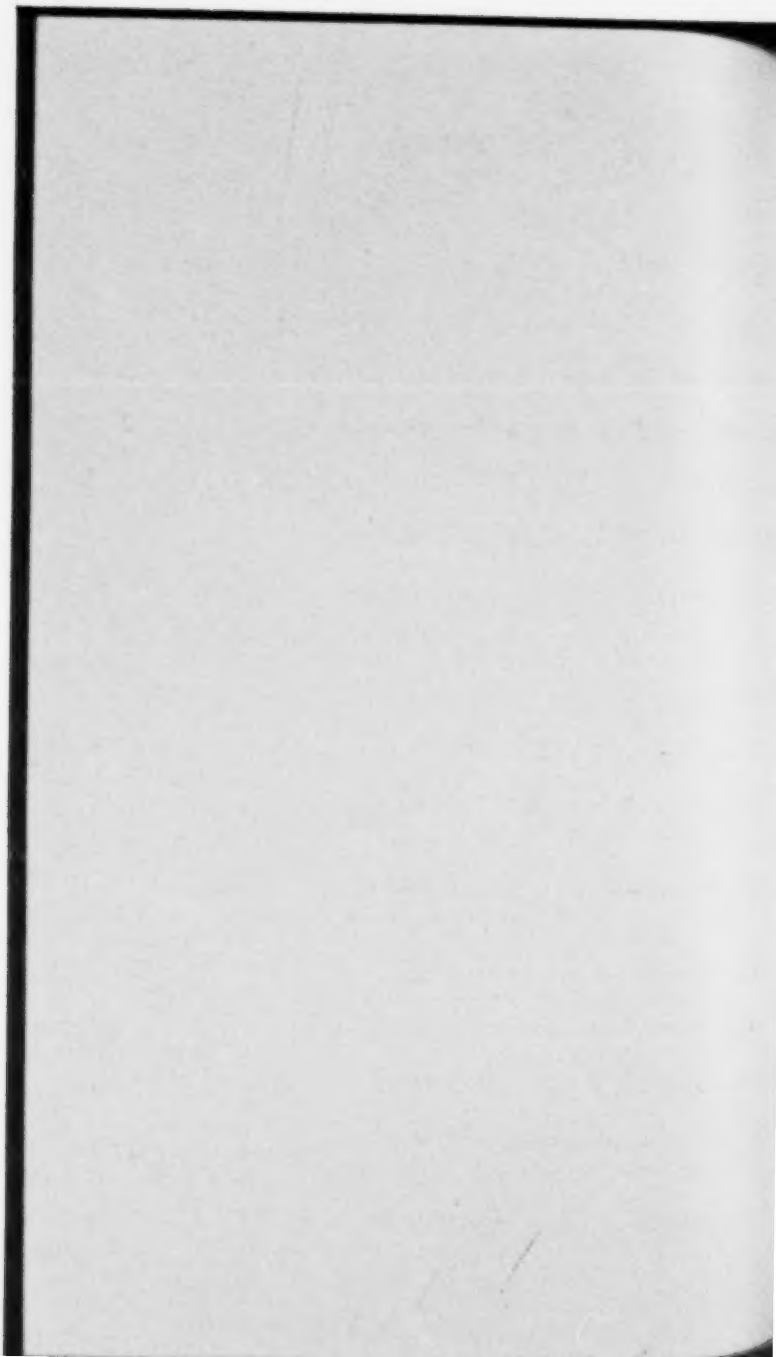
PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

Leonard B. Boudin
Rabinowitz, Boudin & Standard
30 East 42nd Street
New York, New York 10017

William Boyland
78 East State Street
Columbus, Ohio

Attorneys for the Petitioner

David Rosenberg,
of Counsel.



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Konigsberg v. State Bar, 366 U.S. 36 ..... 7, 8, 13

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Law Students Civil Rights Research Council, Inc. v. Wadmond, 68 Civ. 2917, consolidated with, Wexler v. The Supreme Court of the State of New York, 68 Civ. 2938, ___F. Supp.___ (Three-judge court, S.D.N.Y. 1969) 6, 7, 10, 11, 12

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Chafee, *The Blessings of Liberty* (1956) 8

Countryman & Finman, *The Lawyer in Modern Society* (1966) 7

1 Emerson, Haber & Dorsen, *Political and Civil Rights in the United States* (1967) 7

Ginger & Koenigsberg, *Report on Rules for Admission to the Bar: Tests of Applicants' "Loyalty" and "Good Moral Character"*, 18 Law. Guild Rev. 58 (1958) 7

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Stone, *The Public Influence of the Bar*, 48 Harv. L. Rev. 1 (1934) 9

Symposium, *The Right to Counsel and the "Unpopular Cause,"* 20 U. of Pitt. L. Rev. 725 (1959) 9

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SUPREME COURT OF THE UNITED STATES

October Term, 1968

No.

In the Matter of the Application of
MARTIN ROBERT STOLAR
for Admission to the March, 1969,
Ohio Bar Examination

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

Petitioner respectfully prays that a writ of certiorari issue to review the final order of the Supreme Court of the State of Ohio entered herein on February 27, 1969, approving the recommendation of the Committee on Admissions of the Columbus Bar Association (hereinafter the "Committee") denying petitioner's application.

Opinion Below

The order of the court below was accompanied by an unreported memorandum opinion, *infra* at p. 23. The Committee's recommendation to the court below on February 20, 1969, is appended hereto, *infra* at p. 25.

Jurisdiction

The final order of the Ohio Supreme Court was made and entered on February 27, 1969, and is appended hereto, *infra* at p. 23. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Questions Presented

Does the compelled disclosure by applicants for admission to the Ohio Bar of their political and personal activities, beliefs, and associations

(1) violate through overbreadth and otherwise their freedom of speech and association and their right to privacy under the First and Fourteenth Amendments to the Constitution;

(2) interfere with the right to counsel and freedom of speech and association of a class of litigants who seek redress of their federal rights and the right of attorneys to practice law in the federal courts in violation of Articles Three and Six of the Constitution and the First, Sixth and Fourteenth Amendments;

(3) deny their rights to due process and to freedom from unreasonable search and seizure under the First, Fourth and Fourteenth Amendments where the state's inquiry is made to all applicants and is not based upon probable cause arising from facts peculiar to the individual applicant;

(4) violate their rights to due process and freedom of speech, association and belief by placing upon them the burden of proving lawful membership in an organization claimed to be advocating governmental overthrow;

(5) violate the void for vagueness principle of the First and Fourteenth Amendments insofar as it demands the details of membership in organizations advocating governmental overthrow;

(6) violate the constitutional privilege against self-incrimination where answers are compelled under oath, overriding the applicant's assertion of the privilege?

Constitutional and Regulatory Provisions Involved

The principal constitutional provisions involved are Articles Three and Six of the United States Constitution and the First,

Fourth, Fifth, Sixth and Fourteenth Amendments thereto. Rule XVII of the Rules of the Supreme Court of Ohio, entitled, "Admission to the Practice of Law," the only published State regulatory provision applicable to this case, is set forth *infra* at pp. 16-22.

Statement of the Case

Petitioner is twenty-five years old, a graduate of New York University Law School in June, 1968, a member of the New York Bar, and presently assigned to the Columbus (Ohio) Metropolitan Area Community Action Organization through the VISTA program of the United States Government Office of Economic Opportunity.

On January 6, 1969, petitioner applied for admission to the March, 1969 Ohio Bar Examination, by duly filing the necessary application forms and other required certificates, affidavits and fees with the Ohio Supreme Court.

Petitioner also submitted at this time two personal background questionnaires[1] constituting the initial stage of an investigation into his "character, reputation and moral qualifications" for admission to the Ohio Bar. He fully answered all of the interrogatories except the following:

> "12(g): State whether you have been, or presently are... a member of any organization which advocates the overthrow of the government of the United States by force.... If your answer to any section of the above question is 'yes' set forth the facts in detail...." (Questionnaire for Registration).
>
> "13. List the names and addresses of all clubs, societies or organizations of which you are or have been a member" (Questionnaire for Registration).

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1. These questionnaires are titled: "Questionnaire for Registration" and "Questionnaire for Admission."

> "7. List the names and addresses of all clubs, societies or organizations of which you are or have been a member since registering as a law student" (Questionnaire for Admission).

Petitioner responded to each of these questions:

> "I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution."

Petitioner was subsequently interviewed by two members of the Committee who asked why he had refused to answer the questions[2]. Petitioner stated that his refusal was based upon his Fifth Amendment privilege and on the grounds that "the questions were not pertinent to his moral and character fitness as an applicant." *Infra* at p. 30. The interviewers informed petitioner that the consequences of such a refusal might be denial of his application for failure to cooperate with the Committee and the Ohio Supreme Court in the investigation of his character[3]. *Infra* at pp. 30, 34-35.

The interviewers also pursued related avenues of inquiry. In response to their questions, petitioner stated:

> "that he is not now and has never been a member of the Communist Party, or any socialist party, or of the Students for a Democratic Society and. . .that he has signed the standard U.S. Army pre-induction security oath, which has reference to the 'Attorney General's List.'" *Infra* at p. 34.

The Committee and the court below had access to an even greater breadth of information about the petitioner. For, as

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2. Memoranda of this interview prepared by these Committee Members and submitted to the full Committee are appended hereto, *infra* at pp. 30-35.

3. Under Rule XVII, Sec. 3(C), *infra* at p. 17, the Committee was authorized to use the questionnaires as a guide in conducting the character investigation.

part of his application, petitioner was required to and did authorize anyone with information about him to disclose it to the Committee. He had also signed a general release from liability arising out of the furnishing or inspection of this information. In addition, petitioner had been required to authorize the opening of his Selective Service files to the court below. *Infra* at pp. 28-29.

The interviewers found petitioner to be "honest and forthright" and "a very learned person and a very pleasant person." *Infra* at pp. 31, 33. One of the interviewers reported to the Committee that petitioner's

> "statements evidenced also a certain commitment to principle for its own sake, an unusually great amount of social awareness, and a degree of self-interest not reprehensible. On the basis of the interview and the background actually revealed in Mr. Stolar's application I have no reluctance to recommend Mr. Stolar for admission to the practice of law." *Infra* at p. 33.

Both interviewers refused to recommend petitioner's admission to the full Committee, "based on the fact that a complete investigation cannot be made at this time." *Infra* at p. 32.[4]

After the full Committee had met to consider this recommendation, the Chairman of the Admissions Committee notified petitioner by letter dated February 7, 1969 (*infra* at p. 27) that the "Committee had voted to deny your application unless by February 21, 1969 you answer" questions 7, 12(g) and 13.

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4. One of the interviewers stated in his memorandum:
"I cannot recommend him for admission due to the fact he places himself above the rules of the Court and feels that he cannot abide by them when they run afoul of his personal convictions. I also cannot recommend him for admission since I was unable to fully complete the necessary investigation into his moral and character fitness due to his refusal to allow a complete investigation to be made." *Infra* at p. 31.

Petitioner replied in a letter dated February 10, 1969 (*infra* at p. 49), that, "[i]t is my belief that such questions are not within the proper scope of review for a Bar Association Committee on Admissions and in any event, the answers to such questions are protected by the First and Fifth Amendments of the United States Constitution."

Based on this statement, the Chairman of the Admissions Committee reported to the Ohio Supreme Court on February 20, 1969 that "[i]n view of Mr. Stolar's refusal to answer the questions above referred to [questions 7, 12(g) and 13], the Admissions Committee of the Columbus Bar Association recommends that Mr. Stolar's application for admission to the Ohio Bar Examination be denied." *Infra* at p. 26.

Counsel for petitioner first entered the matter while the Ohio Supreme Court was considering the Committee's recommendation by informing the court below, *infra* at pp. 40-45, of a recent decision rendered on February 17, 1969, by a three-judge federal district court sitting in the Southern District of New York which appeared to be in conflict with the Admissions Committee's recommendation. *Law Students Civil Rights Research Council, Inc.* v. *Wadmond*, 68 Civ. 2917, consolidated with *Wexler* v. *The Supreme Court of the State of New York*, 68 Civ. 2938, ___F. Supp.___ (S.D.N.Y. 1969 (hereinafter "*Law Students* case").[5] In that case, the court, per Circuit Judge Friendly, held that questions to applicants for the New York Bar, similar to the questions petitioner refused to answer, were impermissible under the First Amendment. Petitioner's counsel also supported petitioner's First and Fifth Amendment grounds by citing this Court's decision in *Spevack* v. *Klein*,

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5. Ten copies of the opinions in the *Law Students* case have been simultaneously filed with this petition for the convenience of the Court.

385 U.S. 511; District Judge Motley's concurring-dissenting opinion in the *Law Students* case, and *Haskett* v. *Washington*, Civ. No. 20007-68, ___ F. Supp. ___ (three-judge Court, D.D.C., Dec. 4, 1968), 37 U.S.L. Week 2317.[6]

On February 27, 1969, the court below decided that "the recommendation of the Committee on Admissions should be approved." *Infra* at p. 23.

Reasons Relied on for the Allowance of the Writ

1. This case presents squarely the issue of the right of the states, under the First, Fifth and Fourteenth Amendments, to predicate admission to the bar upon the compelled disclosure of the applicant's political and personal associations, beliefs and speech. This became a widespread practice of the various states during the so-called Cold War period where the state courts and the admission committees adopted many of the worst features of the loyalty-security program then in vogue.[7]

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6. Copies of the opinions in the *Law Students* and *Haskett* cases were submitted to the court below for its convenience.

7. See *Schware* v. *Board of Bar Examiners*, 353 U.S. 232; *Konigsberg* v. *State Bar*, 353 U.S. 252; *Konigsberg* v. *State Bar*, 366 U.S. 36; *In re Anastaplo*, 366 U.S. 82; *Application of Patterson*, 302 P. 2d 227 (Ore. 1956); and generally *Application of Levy*, 214 F. 2d 331 (5th Cir. 1954), *rev'd* 348 U.S. 978; Brown & Fassett, *Loyalty Tests for Admission to the Bar*, 20 U. Chi. L. Rev. 480 (1953); Countryman & Finman, *The Lawyer in Modern Society*, 758, 822-884 (1966); Ginger & Koenigsberg, *Report on Rules for Admission to the Bar: Tests of Applicants' "Loyalty" and "Good Moral Character"*, 18 Law. Guild Rev. 58 (1958); 1 Emerson, Haber and Dorsen, *Political and Civil Rights in the United States*, 262-283 (1967); Note, *Inquiries Into the Political Beliefs and Activities of Applicants for Admission to the Bar*, 1 Columbia Survey of Human Rights 33 (1967-1968); *New York State Bar Assoc. Rept. of the Special Committee on the Future Admission to Membership in the New York Bar of Persons of Doubtful Loyalty and the Continuation in Good Standing of Present Members Whose Loyalty is in Doubt* (Jan. 24, 1954), 68 Assoc. of the Bar of the City of New York, Pam. No. 17; *The Proposed Anti-Communist Oath: Opposition Expressed*, 37 ABA J 123 (1951).

These practices, which in recent years have been judicially curtailed in almost every other area of government licensing and employment[8] are vestigial remains in the area of bar admission. Yet, the Bar, as the Court has found with respect to the teaching profession[9] is plainly a most delicate area in which to experiment with First Amendment freedoms. Such investigations inhibit attorneys from associating with and representing politically unpopular groups, as the Court has explicitly recognized. *NAACP* v. *Button*, 371 U.S. 415, 443; *Johnson* v. *Avery*, ____ U.S. ____, 37 U.S.L. Week 4128 (Feb. 24, 1969).[10]

2. These state restrictions directly threaten the independence of the federal as well as the state bar; first, because proceedings in state courts are often the prelude to review by this Court, and, second, because admission to the Bar of of this Court, like all federal courts, is derivative from state admission. *In re Ruffalo*, 390 U.S. 544, 547; *Sperry* v. *Florida Bar*, 373 U.S. 379; *Spanos* v. *Skouras Theatres Corp.*, 364 F. 2d 168 (2d Cir. 1966); cf., *Ex Parte Garland*, 4 Wall. (77 U.S.) 333.

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8. See e.g., *Schneider* v. *Smith*, 390 U.S. 17; *United States* v. *Robel*, 389 U.S. 258; *Sherbert* v. *Verner*, 374 U.S. 398; *Kent* v. *Dulles*, 357 U.S. 116; Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 Harv. L. Rev. 1439 (1968).

9. This Court has been especially vigilant in protecting the political privacy of teachers because of the impact of political inquiry on academic freedom, an interest comparable to that of the independence of the bar involved in this case. See *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250; *Wieman* v. *Updegraff*, 344 U.S. 183, 195; *Baggett* v. *Bullitt*, 377 U.S. 360; *Keyishian* v. *Board of Regents*, 385 U.S. 589, 601-603.

10. See also *Hacken* v. *Arizona*, 389 U.S. 143, 146, *appeal dismissed* (Mr. Justice Douglas dissenting); *Konigsberg* v. *State Bar*, 366 U.S. 36, 73-74, and *In re Anastoplo*, 366 U.S. 82, 115-116 (Mr. Justice Black with whom the Chief Justice and Mr. Justice Douglas concur, dissenting); *Sanders* v. *Russell*, 401 F. 2d 241 (5th Cir. 1968); *Lefton* v. *City of Hattiesburg*, 333 F. 2d 280 (5th Cir. 1964); *Sobell* v. *Perez*, 289 F. Supp. 392 (D. La. 1968); Chafee, *Blessings of Liberty*, 157-176 (1956).

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right to counsel, to unrestricted access to the federal
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ms of right mainly in federal forums, not solely as
n of legal right, but also as a mode of expressing
and political beliefs. See *NAACP* v. *Button*, 371
Mine Workers v. *Illinois State Bar Assn.*, 389 U.S.
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89 U.S. 143, *app. dismiss.* (Mr. Justice Douglas, dis-
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closely to groups upon which they are imposed because "pre-
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have an *pra*; *Aptheker* v. *Secretary of State*, 378 U.S. 500,
supra at *United States* v. *Robel*, 389 U.S. 258, 265. They
utterance *in terrorem*" effect (see *Keyishian* v. *Board of Regents*,
far wider 04) since "[w]hen one must guess what conduct or
513, 526 will lose him his position, he necessarily will steer
v. *Smith* of the unlawful zone," *Speiser* v. *Randall*, 357 U.S.
(; *Shelton* v. *Tucker*, 364 U.S. 479, 486, 498; *Schneider*
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are more) The inquiries as to every organizational connection
unconsti e applicant's lifetime (questions 7, 13, *supra* at pp. 3-4)
v. *Smith* indiscriminate in their sweep than the inquiries held
utional in *Shelton* v. *Tucker*, *supra*. See also *Schneider*
supra.

The withdrawal of precisely such unlimited questions by the New York courts after Judge Motley had ordered the convening of a three-judge court, *Law Students Civil Rights Research Council* v. *Wadmond*, 291 F. Supp. 772, demonstrated in Judge Friendly's view "that the Committee on Character and Fitness and the Justices of the Appellate Divisions are well aware of the need to bring them [the questionnaires] in line with developing concepts of First Amendment rights," *Law Students*, opinion, p. 19. In contrast, the court below, although informed of the decision in the *Law Students* case, that such questions "raise exceedingly serious problems under *Shelton* v. *Tucker*, 364 U.S. 459 (1960)", *id.* at 20, declined to withdraw the questions.

(b) In addition to the overbreadth condemned in *Shelton* and in *Schneider* v. *Smith*, *supra* at 529 (Mr. Justice Fortas concurring), the inquiry as to membership in organizations advocating the overthrow of the government by force (question 12(g), *supra* at p. 3) suffers from other constitutional defects. The most obvious defects are those pointed out by Judge Friendly with respect to a similar New York question[11] – (i) that the organizational teaching may not coincide with the applicant's period of membership, and (ii) that there is no limitation "to cases where the applicant knew of the teaching or advocacy"; hence, the statutory court's conclusion that the state's interest "can be adequately protected by a question

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11. "26. Have you ever organized or helped to organize or become a member of or participated in any way whatsoever in the activities of any organization or group of persons which teaches (or taught) or advocates (or advocated) that the Government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means? ____ If your answer is in the affirmative, state the facts below."

See *Law Students*, opinion, p. 20.

more narrowly phrased," *Law Students*, opinion, p. 24. The court below, although specifically advised of this criticism, *infra* at p. 44, took no step to revise its questions.

The vice of such a question, even if "more narrowly phrased" is much deeper. It creates a presumption of guilt through association in one who, knowing both the legal and the illegal purposes of an organization, shares only the former. See *Baggett* v. *Bullitt*, 377 U.S. 360; *Keyishian* v. *Board of Regents*, *supra* at 608-609. Thus it impermissibly shifts to the applicant the burden of proving his legal membership and, more broadly, his loyalty. *Speiser* v. *Randall*, *supra*.

There is, indeed, serious danger that the presumption of illegal membership would be irrebuttable. See *Keyishian* v. *Board of Regents*, *supra* at 608. Ohio does not offer substantive standards as to what constitutes either illegal membership or illegal organizations so as to limit the investigation and the consequent disqualification. See *Sweezy* v. *New Hampshire*, *supra*; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 242-43. Nor are there even procedural standards to govern the competency or evidence or the question of proof of illegal association. Cf. *Noto* v. *United States*, 367 U.S. 290, 291; *Yates* v. *United States*, 354 U.S. 298; *Woodby* v. *INS*, 385 U.S. 276; *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96; *Speiser* v. *Randall*, *supra* at 525-526.[12]

(c) Ohio's inquiry must be constitutionally assessed in the light of its total impact upon applicants for admission to

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12. A further defect in question 12(g) arises from the term "advocating" which is too vague to be a proper guide to an applicant giving a sworn statement, upon the accuracy of which both his professional career and his susceptibility to prosecution depends. See *Baggett* v. *Bullitt*, *supra*; *Keyishian* v. *Board of Regents*; *Whitehill* v. *Elkins*, 389 U.S. 54; cf. *United States* v. *Brown*, 381 U.S. 437, 455-456. The applicant must choose between over-disclosure or the unachievable: making certain, beforehand, that none of his associations fall under the question's coverage. See *Speiser* v. *Randall*, *supra* at 526.

the bar. The questionnaires here only serve to initiate a broader and more sweeping character investigation. "Controversial" associations disclosed on the questionnaire may be the triggering device for extended interrogation into an applicant's political and personal privacy. The investigatory license here is akin to a general warrant sanctioning an indiscriminate search based on the investigator's political biases and predilections.

(i) Petitioner's capitulation to certain demands does not minimize their role in this context. He obviously felt compelled to answer the Committee's inquiry that he had never been a member of "any socialist party, or of the Students for a Democratic Society" and that he has signed the standard U.S. Army pre-induction security oath which has reference to the "Attorney-General's List." Cf. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123. But his "satisfactory" responses here should not blind us to the length to which Ohio has gone in construing its mandate to inquire and determine.

(ii) Likewise, it is significant that petitioner was compelled to authorize every person to give information "regarding complaints or charges. . . *or any other pertinent data*." (Emphasis added.) *Infra* at p. 28. This is the converse of the New York question requiring disclosure of "any incident which has. . . bearing on your character and fitness," of which Judge Friendly said, "[t]his catch-all has a serious *in terrorem* effect," *Law Students*, opinion, p. 25, adding, [w]e find no interest of the state sufficiently compelling to require an applicant to engage in the soul-searching of his entire past life," *ibid.*

(iii) Finally, the petitioner was required to authorize the court below to obtain his Selective Service file, *infra* at p. As the court in the *Law Students* case (p. iii, ftn. 9) stated, there is "considerable doubt as to the propriety of" such an unrestricted authorization.

"4. Every applicant for admission to the Ohio Bar Examination is required as a matter of course to answer the interrogatories. No preliminary showing of cause is required by Ohio generally or was made in the present case. In this respect the present case contrasts sharply with the second *Konigsberg* case where the Court noted that the state's inquiry was based upon independent information which it had received concerning the California applicant, *Konigsberg* v. *State Bar*, 366 U.S. 36, 45.[13] Indeed, the Committee's comments upon petitioner were most flattering.

The absence of probable cause to compel even limited disclosures of political associations violates the First Amendment. See *Gibson* v. *Florida Legislative Investigation Committee*, 371 U.S. 539, 557, requiring "an adequate foundation for inquiry." This foundation must be established upon independent (*Sweezy* v. *New Hampshire*, *supra* at 251, 266), relevant (*DeGregory* v. *New Hampshire Attorney General*, 383 U.S. 825, 830), and substantial evidence (*Speiser* v. *Randall*, *supra* at 529). Cf. *Uphaus* v. *Wyman*, 360 U.S. 72, 79.

The court below exercised both an investogatory and adjudicatory power in determining the petitioner's qualifications for admission. See *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96. Hence, the absence of "an adequate foundation for inquiry" into petitioner's First Amendment protected associations violates his due process rights to confrontation and notice of charges, *ibid*. In due process terms, there

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13. This case also differs from *Konigsberg* v. *State Bar*, *supra*, and *In re Anastaplo*, 366 U.S. 82, in the breadth of the present interrogatories as opposed to the narrow question involved in those cases, of Communist Party affiliation which, for certain reasons, carried a presumed opprobrium. Nevertheless, if a writ is granted here, we would argue for the reconsideration of the *Konigsberg* and *Anastaplo* decisions in the light of the dissenting opinions in those cases and subsequent decisions of this Court.

is no logical distinction between disbarment and denial of admission; both proceedings affect substantial interests of the individual. *In re Ruffalo*, 390 U.S. 544; *Greene* v. *McElroy*, 360 U.S. 474, and *Schneider* v. *Smith*, *supra* at 25.

The baseless intrusion into petitioner's privacy authorized by the court below would be a novel doctrine even if this case involved the highest of state interests—health, safety and welfare. See *Camara* v. *Municipal Court*, 387 U.S. 523; *See* v. *Seattle*, 387 U.S. 541. In the First Amendment area such an intrusion is condemned as a prior restraint. See *Marcus* v. *Search Warrants of Property*, 367 U.S. 717; *A Quantity of Copies of Books* v. *Kansas*, 378 U.S. 205; *Freedman* v. *Maryland*, 380 U.S. 51; *Haskett* v. *Washington*, *supra*.

5. While the court below did not address itself specifically to the point, its decision clearly penalized petitioner's assertion of his privilege against self-incrimination. *Spevack* v. *Klein*, *supra*. This Court has held such state action to violate the due process clause where inferences of guilt were drawn, *Slochower* v. *Board of Higher Education*, 350 U.S. 551, 557, and to violate the constitutional privilege, where dismissal occurred without such inference. *Sanitation Men* v. *Sanitation Commissioner*, 392 U.S. 280; see also *Garrity* v. *New Jersey*, 385 U.S. 493. Several members of the Court have indicated the constitutional privilege may offer greater protection to lawyers than to state employees, *Spevack* v. *Klein*, *supra; a fortiori*, with prospective licensees such as petitioner. In any event, the present sweeping inquiry without probable cause was not the narrow accounting of stewardship which remains for determination of the Court, see *Sanitation Men* v. *Sanitation Commissioner*, *supra*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Leonard B. Boudin
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Attorneys for the Petitioner

David Rosenberg,
of Counsel.

March 25, 1969

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SUPREME COURT OF OHIO

RULE XVII.

ADMISSION TO THE PRACTICE OF LAW.

Section 1. General Requirement.

Except as provided in Section 8 of this rule, to be admitted to the practice of law in Ohio, a person must

(A) be a citizen of the United States;

(B) be 21 years of age;

(C) have earned, prior to admission to law school, a bachelor's degree approved by the Court or earned in a college or university approved by one of the following accrediting associations: Middle States Association of Colleges and Secondary Schools, New England Association of Colleges and Secondary Schools, North Central Association of Colleges and Secondary Schools, Northwest Association of Secondary and Higher Schools, Southern Association of Colleges and Secondary Schools, and the Western College Association;

(D) have a degree from a law school which is approved by the American Bar Association and if located in Ohio, is also a member of the League of Ohio Law Schools;

(E) be approved as to character under procedures provided in this rule;

(F) have passed an examination conducted by the Ohio Board of Bar Examiners; and

(G) have taken the oath of office.

Section 2. Preliminary Registration Requirements.

(A) Every person who intends to take the Ohio bar examination shall file with the Clerk of this Court, within 120 days after entering law school, an application for reg-

istration as a candidate for admission to the practice of law on a form prescribed and furnished by the Court. The application shall be accompanied by

(a) a certificate of the dean of the law school showing that the applicant has begun the study of law;

(b) a properly authenticated transcript of college credits showing that prior to admission to law school the applicant has earned a bachelor's degree;

(c) a character questionnaire in duplicate prescribed and furnished by the Court;

(d) a fingerprint identification on the form used by the Federal Bureau of Investigation; and

(e) a registration fee of twenty dollars. (Effective Sept. 1, 1963.)

Section 3. Character Investigation.

(A) The president of each local bar association shall appoint a Committee on Applicants for Admission to the Practice of Law consisting of three or more members each of whom shall serve without compensation for a term of three years. One-third of the committee members' terms shall expire each year. These committees shall be responsible for investigating the character, reputation and moral qualifications of applicants and shall report their findings and recommendations to the Clerk of this Court.

(B) If the applicant is a resident of Ohio, one copy of the questionnaire required by Section 2 shall be forwarded by the Clerk to the Committee on Applicants for Admission to the Practice of Law in the county where the applicant claims permanent residence.

(C) In conducting the investigation, the local committee shall utilize the applicant's character questionnaire and shall also obtain answers to questionnaires from three citizens in the county, none of whom is related to the ap-

plicant. Two members of the committee shall personally interview the applicant and record the results on a form prescribed by the Court.

(D) This Court shall determine from the report of the local bar association committee and from other available information whether the applicant shall be accepted for registration. The Clerk shall notify each applicant concerning the acceptance or rejection of the application.

(E) If the applicant is a nonresident, the Clerk shall take such steps as are feasible to provide for character investigations as nearly as possible in conformity to the above procedures.

Section 4. Application for Examination.

(A) Applications to take the examination shall be filed with the Clerk of this Court at least 90 days before the time fixed for the examination. Each application shall be accompanied by

(a) the applicant's affidavit that he has read and studied the Canons of Professional Ethics adopted by the American Bar Association and approved by this Court;

(b) a certificate from the law school that the applicant has or will have received a law degree, is a person of good moral character, has sufficient knowledge and ability to discharge the duties of an attorney at law and has received instruction in legal ethics;

(c) a questionnaire in triplicate furnished by the Court updating the information on character and moral fitness furnished at the time of registration; and

(d) a fee of forty dollars refundable only in the event of disapproval. (Effective September 1, 1963.)

(B) This Court shall pass on the application and the Clerk shall notify the applicant of the Court's approval or disapproval.

Section 5. Bar Examination.

(A) The bar examination shall be prepared and conducted under the direction of the Board of Bar Examiners appointed by the Court and consisting of ten members of the bar of Ohio. The members of the board shall serve terms of five years and shall be so appointed that the terms of two examiners will expire each year.

(B) Two examinations shall be held each year in Columbus. One shall begin on the first Tuesday in March and the other on the last Tuesday in July. Each examination shall continue for three days and shall be divided into six half-day sessions. Each examiner shall prepare and submit five questions, of which the applicants shall answer four. The subject matter of the questions shall not be designated or labeled.

(C) The examination shall consist of the following:

Subjects	Number of Questions
Business Associations (including Agency, Partnership and Corporations)	8
Constitutional Law	5
Contracts	5
Criminal Law	2
Equity, Trusts and Wills	8
Evidence	5
Negotiable Instruments	2
Property (Real and Personal)	5
Pleading and Practice	5
Torts	5

(D) No applicant shall be admitted to the practice of law unless a grade of 75 per cent is received on the examination. The grades as determined by the Board of Bar Examiners shall be final.

(E) The Board of Bar Examiners may, subject to the approval of the Court, promulgate additional rules to aid in the conduct of the examinations.

Section 6. Re-Examination.

(A) Applicants for re-examination may apply for admission to the March examination only. No applicant will be admitted to more than three examinations.

(B) Applications must be filed with the Clerk of this Court at least 90 days before the time fixed for examination.

(C) Before being admitted to the examination, the applicant must again be approved by the local Committee on Admissions to the Practice of Law.

(D) Each application for re-examination, submitted on a form prescribed by the Court, must be accompanied by a fee of sixty dollars refundable only in the event the application is disapproved. The fee for a second re-examination is seventy dollars.

Section 7. Induction to the Bar.

(A) Each successful applicant and each person admitted under Section 8 must sign a roll designating his residence and take the following oath of office:

I Do Solemnly Swear:

I will support the Constitution of the United States and the Constitution of the State of Ohio;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and I will accept no compensation

in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed or delay any man's cause for lucre or malice, So Help Me God.

(Clerk's note: This form of oath was adopted January 25, 1910. It is the form recommended by the American Bar Association.)

(B) A fee of ten dollars shall be charged for each certificate of admission. A charge of one dollar shall be made for a duplicate certificate of admission.

Section 8. Admission Without Examination.

(A) An applicant for admission to the practice of law in Ohio without examination must file the following with the Clerk of this Court:

(a) a certificate of admission as an attorney at law in the highest court of another state or in the District of Columbia;

(b) a certificate, signed by a judge of a court of record of the state from which he seeks admission, indicating that the applicant is of good moral character and is in good standing in the bar of that state;

(c) certificates evidencing education equal to the requirements prescribed by this Court for admission to the practice of law in Ohio in effect at the time the applicant was admitted in such other state;

(d) evidence showing that applicant has, for at least five years, engaged in legal work of such character and description as shall satisfy this Court that the applicant possesses the legal skills deemed

adequate for admission to the practice of law in Ohio without examination;

(e) a certificate by an attorney at law of this state that the applicant is of good moral character and recommending him for admission to the practice of law in Ohio;

(f) applicant's affidavit that he is a citizen of the United States and that he is a resident of this state or intends to come into the state for the purpose of making it his permanent residence (if the applicant is not a resident of Ohio, his certificate shall not be issued until he has established residence in this state);

(g) an application and questionnaire, in duplicate, for use by the National Conference of Bar Examiners in making a character investigation;

(h) a fingerprint identification card on the form used by the Federal Bureau of Investigation;

(i) a nonrefundable fee of one hundred and fifty dollars.

(B) This Court shall pass on the application, and the Clerk shall notify the applicant of the Court's approval or disapproval.

Order and Memorandum Opinion of the Supreme Court of Ohio

THE STATE OF OHIO,)
)
City of Columbus.)

1969 TERM

To wit: Thursday, February 27, 1969

In the Matter of the Application)
of Martin Robert Stolar to be)
admitted to the March, 1969,)
Ohio Bar Examination.)

ENTRY

The Court coming now to consider the application of Martin Robert Stolar, the recommendation of the Committee on Admissions of the Columbus Bar Association and the memorandum and material submitted by counsel for Mr. Stolar, finds that oral argument in this matter is not necessary, and that the recommendation of the Committee on Admissions should be approved.

It is, therefore, ordered that the application of Martin Robert Stolar to be admitted to the March, 1969, Ohio Bar Examination be denied.

I, THOMAS L. STARTSMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. 49 Page.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 27th day of February, 1969.

THOMAS L. STARTZMAN, Clerk

By_____Deputy.

Recommendation of the Committee on Admissions of the Columbus Bar Association

February 18, 1969

Thomas Startzman, Esq.
Clerk of Supreme Court
State House Annex
Columbus, Ohio

Re: Martin Robert Stolar

Dear Mr. Startzman:

The Admissions Committee of the Columbus Bar Association has considered the application of Martin Robert Stolar, 999 Caldwell Place, Apt. 1409, Columbus, Ohio, for admission to the Ohio bar examination. As indicated thereon Mr. Stolar has refused to answer questions 12(g) and 13 of applicant's questionnaire for registration as a law student and question 7 of applicant's questionnaire for admission to the bar examination.

The Admissions Committee voted to recommend to the Supreme Court that Mr. Stolar's application be denied unless Mr. Stolar answered the indicated questions. This information was transmitted to Mr. Stolar by certified mail and Mr. Stolar has indicated to the undersigned both by telephone and by letter that he will not answer the indicated questions. A copy of his letter is attached hereto. He further indicates that he did not wish the committee to wait until February 21, 1969, to forward this matter to you.

Recommendation of the Committee on Admissions of the Columbus Bar Association

Thomas Startzman, Esq.
February 18, 1969

In view of Mr. Stolar's refusal to answer the questions above referred to, the Admissions Committee of the Columbus Bar Association recommends that Mr. Stolar's application for admission to the Ohio Bar examination be denied.

Very truly yours,

William H. Schneider
Chairman
Admissions to the Bar
Committee

WHS:lml
Enclosure

Committee Letter to Petitioner

February 7, 1969

Mr. Martin Robert Stolar
999 Caldwell Place
Apartment 1409
Columbus, Ohio

Dear Mr. Stolar:

The Admissions Committee of the Columbus Bar Association has considered your application for admission to the Ohio Bar examination. The committee has voted to deny your application unless by February 21, 1969, you answer questions 12(g) and 13 of applicant's questionnaire for registration as a law student and question 7 of applicant's questionnaire for admission to bar examination.

Upon receipt of the answers to these questions the investigating committee will further consider your application.

Very truly yours,

William H. Schneider
Chairman
Admissions to the
Bar Committee

WHS:lml

CERTIFIED MAIL
RETURN RECEIPT REQUESTED 27

Authorization and Release

I, Martin Robert Stoler, born at Syracuse, New York, on April 2, 1943, having filed an application for admission to the bar of Ohio, consent to have an investigation made as to my moral character, professional reputation and fitness for the practice of law and such information as may be received reported to the admitting authority. I agree to give any further information which may be required in reference to my past record.

I also authorize and request, every person, firm, company, corporation, governmental agency, court, assocation or institution having control of any documents, records and other information pertaining to me,to furnish to the Supreme Court of Ohio any such information, including documents, records, bar association files regarding charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent data, and to permit the Supreme Court of Ohio or any of its agents or representatives to inspect and make copies of such documents, records, and other information.

I specifically authorize the Supreme Court of Ohio to obtain any information from my official record on file with Local Board Number 75 of the Selective Service System, located in the City of Rochester, State of New York; and hereby consent to and authorize the release of such information by the Selective Service System.

Authorization and Release

I hereby request and authorize the Department of the_____
(Army, Navy, Air Force)
to furnish to the Supreme Court of Ohio, the record of each period of my service therein, and to furnish the character of service rendered for each period. My serial number was not applicable.

I hereby release, discharge, exonerate the Supreme Court of Ohio, its agents and representatives, the admission agency of the above jurisdiction, its agents and representatives, and any person so furnishing information from any and all liability of every nature and kind arising out of the furnishing or inspection of lsuch documents, records, and other information or the investigation made by the Supreme Court of Ohio.

I have read the foregoing document and have answered all questions fully and frankly. The answers are complete and true of my own knowledge.

State of Ohio
County of Franklin ss.

s/ Martin Robert Stoler
Signature of Applicant

Subscribed and sworn to before me this 23 day of Dec. A.D., 1968

s/ Charles A. Williams
CHARLES A. WILLIAMS
Notary Public, Franklin County, Ohio
My Commission Expires 6/25/72

Memoranda of Petitioner's Interview

In the Matter of the Application for
Registration of Martin Robert Stolar
As a Candidate for Admission to the
Practice of Law

January 23, 1969

On January 23, 1969, the undersigned interviewed the applicant pursuant to the Rules of the Supreme Court of Ohio for applications for the practice of law. Richard Snodgrass, Attorney at Law, a member of the Admissions Committee, was also present for the interview.

It was noted that Mr. Stolar had refused to answer questions 12g and 13 on the Applicant's Questionaire and question 7 on the Applicant's Questionnaire for Bar Examination for the following stated reasons, "I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution."

Mr. Snodgrass and myself advised Mr.Stolar of the consequences of his refusal to answer these questions. After receiving this advice and stating he understood the matter, Mr.Stolar still refused to answer the above listed questions. His reason for refusing to answer was based on the premise that the questions were not pertinent to his moral and character fitness as an applicant. His principles and personal convictions would not allow him to answer these questions.

January 23, 1969

Based on my investigation, I find Mr. Stolar to be a very learned person and a very pleasant person, but I cannot recommend him for admission due to the fact he places himself above the rules of the Court and feels that he cannot abide by them when they run afoul of his personal convictions. I also cannot recommend him for admission since I was unable to fully complete the necessary investigation into his moral and character fitness due to his refusal to allow a complete investigation to be made.

J. Richard Lumpe
37 West Broad Street
Columbus, Ohio
221-6755

BEFORE THE SUPREME COURT OF OHIO

In the Matter of the Application for
Registration of Martin Robert Stolar

REPORT OF COMMITTEE ON APPLICANTS FOR
ADMISSION TO THE PRACTICE OF LAW

* * * *

6. What is your recommendation relative to the applicant's registration as a candidate for admission to the practice of law? I recommend that he not be registered at this time based on the fact that a complete investigation cannot be made at this time. See reasons set forth in the attached statement.

Date January 23, 1969
Address 37 West Broad St., Columbus

s/ J. Richard Lumpe
J. Richard Lumpe

Memoranda of Petitioner's Interview

In the Matter of the Application for
Registration of Martin Robert Stolar
As a Candidate for Admission to the
Practice of Law

January 27, 1969

J. Richard Lumpe and I interviewed Mr. Stolar on Thursday, January 23, 1969.

I found Mr. Stolar to be honest and forthright. His statements evidenced also a certain commitment to principle for its own sake, an unusually great amount of social awareness, and a degree of self-interest not reprehensible. On the basis of the interview and the background actually revealed in Mr. Stolar's applications I have no reluctance to recommend Mr. Stolar for admission to the practice of law.

My recommendation is qualified, however, in that I can recommend him only if the Committee as a whole is willing to recommend his admission despite his refusal, with full notice of the possible consequences, to answer questions on the applications touching on his present and former organizational membership.

Two questions on each application Mr. Stolar, relying on the Fifth Amendment, refused to answer, on the ground that such

January 27, 1969

questions go to matters not properly within the subject matter of such an inquiry. He rejected the argument that the Court, an agency of the state and of which he is to be a servant, has a right to inquire into such matters and to receive his full co-operation in doing so. He did state in response to direct questions that he is not now and has never been a member of the Communist Party, of any socialist party, or of the Students for a Democratic Society, and stated that he has signed the standard U.S. Army pre-induction security oath, which has reference to the "Attorney General's List".

Mr. Stolar was fully advised of the possible consequences of refusing to answer within the context of the Schwere and Konigsberg cases and the possible position of the Committee and of the Ohio Supreme Court that admission would and could lawfully be denied because of his refusal to

January 27, 1969

answer and cooperate in the investigation. The issue then would seem to be whether the Committee and the Court are willing to honor Mr. Stolar's claimed rights above their own.

Richard Snodgrass
37 West Broad Street
Columbus, Ohio
228-1511

Counsel's Memorandum on Behalf of Petitioner

February 24, 1969

Clerk
Supreme Court of Ohio
Columbus, Ohio

Re: Application of
MARTIN ROBERT STOLAR
to Take the Ohio Bar
Examination

Dear Sir:

The undersigned attorneys, Leonard B. Boudin of New York City, New York, and a member of the New York Bar, and William Boyland of Columbus, Ohio, and a member of the Ohio Bar, hereby request permission of this Court to appear on behalf of Martin Robert Stolar or as amicus curiae to present certain information set out below, which is relevant to the consideration of this matter. Would you kindly submit copies of this

letter and the other material enclosed herewith to the members of this Court?

Mr. Stolar has informed us that on February 7, 1969, he was notified by Mr. William H. Schneider, Chairman of the Admissions Committee of the Columbus Bar Association, that the Committee had decided to deny Mr. Stolar's application for permission to take the Ohio Bar Examination scheduled for March 4, 5 and 6, 1969 "unless by February 21, 1969, you [Mr. Stolar] answer questions 12(g) and 13 of the applicant's questionnaire for registration as a law student and question 7 of applicant's questionnaire for admission to bar examination".

Question 12(g) of the applicant's questionnaire for registration provides:

> "State whether you have been, or presently are . . . (g) a member of any organization which advocates the overthrow of the government of the United States by force.
>
> If your answer to any section of the above question is 'Yes,' set forth the facts in detail, designating by letter the portion of the question to which you refer. Include names of cases and dates of all court proceedings, the dispositions made thereof, and the name and address of the court in which the record may be found." [This latter portion of question 12 applies generally to subsections 12(a) - 12(g).]

Mr. Stolar answered question 12(g) by stating:

> "I will not answer this under my right as guaranteed by the Fifth Amendment of the U. S. Constitution."

Questions 13 of the applicant's questionnaire for registration and 7 of the applicant's questionnaire for admission to bar examination are similar and in Mr. Stolar's case overlapping.

They provide respectively:

> "13. List the names and addresses of all clubs, societies or organizations of which you are or have been a member."
>
> "7. List the names and addresses of all clubs, societies or organizations of which you are or have been a member since registering as a law student."

Mr. Stolar's replies to both questions 13 and 7 were precisely the same as his answer to questions 12(g):

> "I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution."

In his letter of reply to the Committee, dated February 10, 1969 (annexed hereto as Exhibit A), Mr. Stolar stated:

> "Please be informed that I will not change my answers to questions 12(g), 13 and 7 of the two application forms. This will be my position on February 21, 1969 also.
>
> It is my belief that such questions are

> not within the proper scope of review for a Bar Association Committee on Admissions and in any event, the answers to such questions are protected by the First and Fifth Amendments of the United States Constitution."

Mr. Stolar has therefore grounded his refusal to answer the three questions involved on both the First and Fifth Amendments to the Constitution.

Recently a three-judge federal district court for the Southern District of New York, in an opinion by Circuit Judge Friendly dated February 17, 1969 (the full opinion of Judge Friendly and dissenting opinion of District Judge Motley, as yet not officially reported, are submitted herewith for the convenience of the Court) fully explored the import of the First Amendment to questions on an admission questionnaire for the New York Bar which

were almost identical to the questions Mr. Stolar refused to answer.

In the course of conducting its investigation of the character and fitness of applicants to the New York Bar, the Committees on Character and Fitness for the New York Appellate Divisions, First and Second Judicial Departments (covering New York City and surrounding suburban counties) included the following questions on their questionnaires:

> "26. Have you ever organized or helped to organize or become a member of or participated in any way whatsoever in the activities of any organization or group of persons which teaches (or taught) or advocates (or advocated) that the Government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence or any other unlawful means? If your answer is in the affirmative, state the facts below.

"28(a) Have you participated in activities of a public or patriotic nature or in philanthropic, religious, or social service? If so, state fully.

"(b) If you engaged in extracurricular activities (athletic, dramatic, debating, club, committee, administration, etc.) in college, indicate approximate amount of time spent and responsibility involved.

"29(a) Give names, addresses, objects and period of membership in each and every club, association, society or organization of which you are or have been a member other than those associated with and recognized by accredited schools and colleges."

Questions 28(a) and 29(a) were withdrawn by the Committees soon after the commencement of the three-judge court action.

Judge Friendly made the following observation regarding the withdrawal of these questions (see pp. 19-20 of Judge Friendly's opinion):

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> "The questionnaires in use in the two departments have been the subject of recent changes which demonstrate that the Committees on Character and Fitness and the Justices of the Appellate Divisions are well aware of the need to bring them in line with developing concepts of First Amendment rights . . . After the commencement of the actions the Appellate Divisions deleted questions[28(a), (b) and 29(a)] which would have raised exceedingly serious problems under Shelton v. Tucker, 364 U.S. 479 (1960). See also Schneider v. Smith, 390 U.S. 17 (1968)." (Emphasis supplied)

The court stayed issuance of an injunction against the resumption of questions 28(a), (b) and 29(a) out of "[c]onsiderations of comity to respected fellow-judges" so that they might be "afforded a reasonable opportunity to reflect on our conclusions and perhaps take action that might obviate any occasion for an injunction." (See Judge Friendly's opinion at p. 27).

As to Question 26, the court held that it was unconstitutionally overbroad. Judge Friendly ruled:

> "The most obvious problems with Question 26 are the parenthetical past-tense verbs . . . The question should be corrected to clarify that the organization's teaching or advocacy of violent overthrow must have coincided in time with applicant's membership . . .
>
> . . . . . .
>
> "no Supreme Court decision has gone beyond sustaining inquiry into membership in organizations known to the member to advocate forceful or violent overthrow, or in the Communist Party whose advocacy is evidently deemed a matter of common knowledge. We are not disposed to sanction inquiries of greater scope." (at pp. 23-24)

The court ordered that Question 26 be "omitted or rephrased" within 90 days and that present applicants be permitted to "answer Question 26

only as limited to membership in organizations known to them to be then teaching or advocating overthrow of the Government by force or violence" (Judge Friendly's opinion at p. 27).

We respectfully submit that in light of Judge Friendly's reasoned opinion and the many recent Supreme Court decisions he and Judge Motley (dissenting) rely upon, Mr. Stolar was justified in refusing to answer the questions involved in this matter and that such refusal cannot, consistent with the First Amendment, be the basis for denying his application. Because of the time problem here with respect to the impending bar examination of March 4, 5 and 6 for which Mr. Stolar has been preparing, we respectfully request that

he be admitted to that examination so that he will not be penalized for asserting his First and Fifth Amendment rights.

The Court may desire Mr. Stolar to answer Question 12(g) as rephrased in accordance with Judge Friendly's opinion, but we think that this matter should be considered after the applicant has had an opportunity to take the examination. This would permit sufficient time for full briefing and argumentation on the applicant's claim of his Fifth Amendment rights (see Spevack v. Klein, 385 U.S. 511), an issue not involved in the case before Judge Friendly, and other First Amendment objections regarding the power to issue and the propriety of such a question, even as rephrased. These First Amendment ob-

jections were explored in Judge Motley's dissenting opinion and were the basis for the Judge's order convoking the three-judge court (see 291 F. Supp. 772). Another recent opinion fully developing these objections may be found in Haskett v. Washington, Civ. No. 2007-68 (D.D.C., Dec. 4, 1968, Skelley-Wright, Circuit Judge, concurring). (A copy of this decision, not yet officially reported, is submitted herewith for the convenience of the Court.)

We further request an opportunity for oral presentation regarding the issues raised in this matter, preferably this week. If upon the receipt of this letter the Court has already decided to deny Mr. Stolar's application,

we respectfully urge reconsideration in light of the above information and further presentation during oral argument.

Yours truly,

Leonard B. Boudin
Rabinowitz, Boudin & Standard
30 East 42nd Street
New York, N.Y. 10017
(212) OX. 7-6640

William Boyland
Campbell & Boyland
78 East State Street
Columbus, Ohio
(614) 224-6262

Attorneys for the Applicant

LBB:j

cc:

William H. Schneider, Esq.
Columbus Bar Association
Committee on Admissions
40 South Third Street
Columbus, Ohio 43215

Petitioner's Letter to Committee

EXHIBIT A

999 Caldwell Place
Apartment 1409
Columbus, O. 43203

February 10, 1969

William H. Schneider, Esq.
Columbus Bar Association
Committee on Admissions
40 South Third Street
Columbus, Ohio 43215

Dear Mr. Schneider:

I am in receipt of your letter of February 7, advising me of your Committee's denial of my application. Please be informed that I will not change my answers to questions 12(g), 13 and 7 of the two application forms. This will be my position on February 21, 1969 also.

It is my belief that such questions are not within the proper scope of review for a Bar Association Committee on Admissions and in any event, the answers to such questions are protected by the First and Fifth Amendments of the United States Constitution.

I urge your committee to reconsider its decision. In the event that they do not, or do reconsider and reach the same conclusion, I would appreciate your informing me as soon as possible. In any event,

I would like to know if I am entitled to a hearing before the Supreme Court and if so, I request such a hearing with counsel.

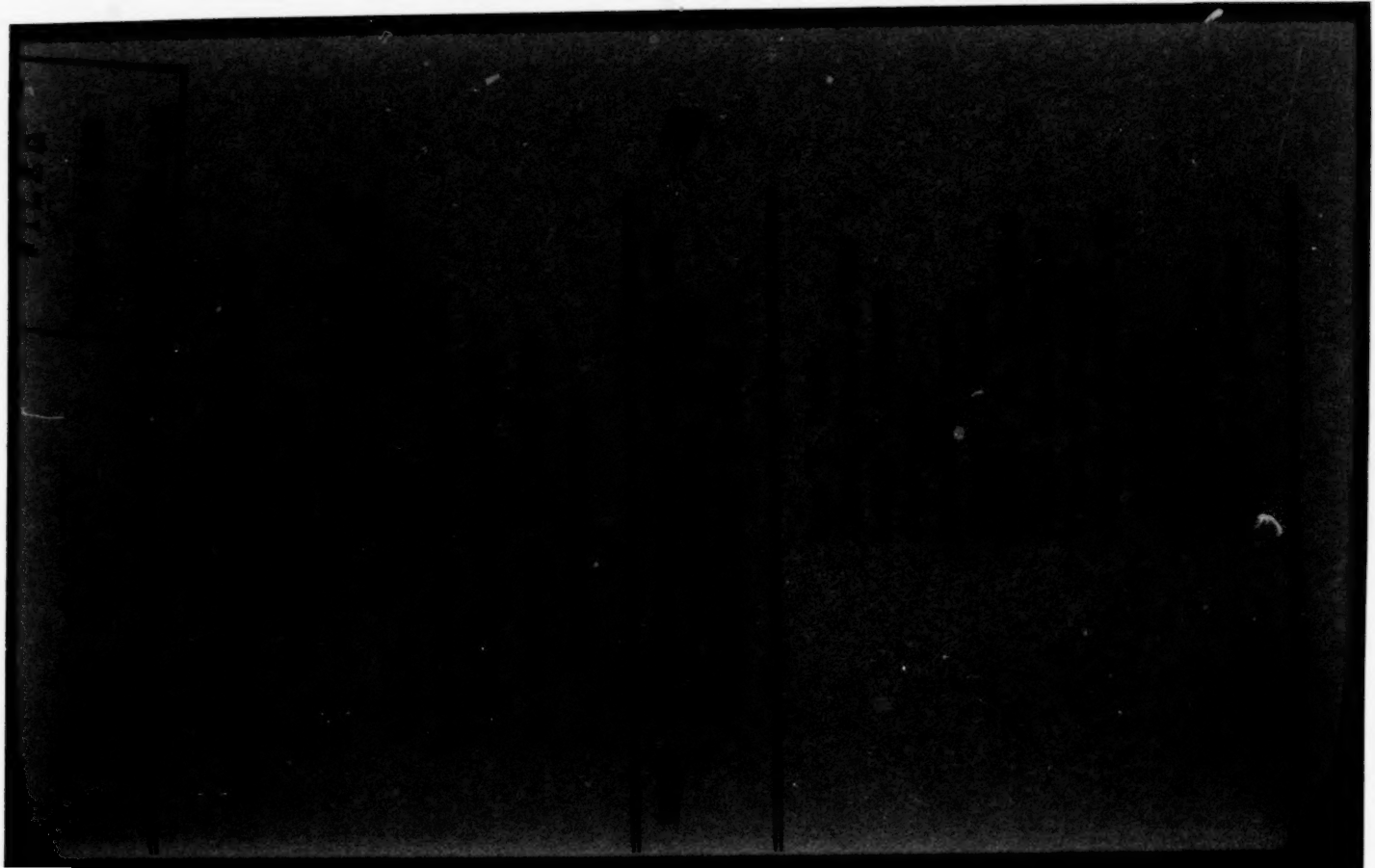
I would appreciate your acting and responding with dispatch in this matter since the examination is but a short time away.

Yours very truly,

Martin R. Stolar

MRS/s

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1214

In the Matter of the Application of
MARTIN ROBERT STOLAR
for Admission to the March, 1969,
Ohio Bar Examination

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

The Attorney General of Ohio and the Columbus Bar Association respectfully pray that a writ of certiorari to review the final order of the Supreme Court of Ohio entered herein on February 27, 1969 be denied.

OPINION BELOW

The unreported order of the Supreme Court of Ohio denying petitioner's admission to the March, 1969 Ohio bar examination appears in the Appendix at page 1a.

PRELIMINARY STATEMENT

The Ohio Constitution gives the Supreme Court of Ohio original and exclusive jurisdiction over admission to the practice of law and requires the Court to make rules governing admission to the practice of law (Article IV, Section 2(B)(1)(g) and Section 5(B), Appendix, pages 9a-10a). The Supreme Court of Ohio has promulgated Rule XVII of its Rules of Practice governing admission to the practice of law (Appendix, page 2a). Section 3 of Rule XVII requires each of the 89 local bar associations in the state (one in

each county except Cuyahoga County which has two), to appoint a Committee on Applicants for Admission to the Practice of Law which "* * * shall be responsible for investigating the character, reputation and moral qualifications of applicants and shall report their findings and recommendations to the Clerk * * *" of the Supreme Court (Appendix, page 3a).

In the questionnaires prerequisite to the taking of the Ohio bar examination (Appendix, pages 20a-31a), petitioner refused to answer questions concerning his membership in organizations "* * * under my right as guaranteed by the Fifth Amendment of the United States Constitution." The bar admission committee of the Columbus Bar Association was unable to complete the investigation into petitioner's character and moral qualifications required by Rule XVII and informed the Clerk of the Supreme Court of Ohio that it could not recommend that petitioner be permitted to take the March, 1969 bar examination.

The Supreme Court, through the Clerk, offered petitioner an opportunity to complete the questionnaire and the character investigation. Petitioner, represented by counsel, declined on the grounds of the First and Fifth Amendments to the Constitution of the United States. Thereupon, the Supreme Court of Ohio denied petitioner's application to take the March, 1969 bar examination. Petitioner filed a petition for a writ of certiorari in this Court contending that the Supreme Court of Ohio has violated Articles III and VI and the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and that this Court should reverse the action of the Supreme Court of Ohio and admit petitioner to the Ohio bar examination.

The Attorney General of Ohio and the Columbus Bar Association respectfully contend that none of petitioner's

rights under the Constitution of the United States have been violated or infringed by the Supreme Court of Ohio. The facts of petitioner's case show that no substantial constitutional questions are raised herein and that the Supreme Court of Ohio was justified in denying petitioner admission to the March, 1969 bar examination.

Since petitioner cannot show that Rule XVII or the practice of the Supreme Court of Ohio under Rule XVII is repugnant to the Constitution of the United States and cannot claim any right under the Constitution of the United States which is being denied to him by the Supreme Court of Ohio, either of which would give this Court jurisdiction under 28 U.S.C. 1257(3), the petition for a writ of certiorari should be denied.

QUESTION PRESENTED

The only question presented by this case is whether petitioner, who refused to provide relevant information necessary to a determination of his character and moral qualifications, is entitled to be admitted to the Ohio bar examination. This Court, in *Konigsberg v. State Bar of California*, 366 U.S. 36 (1961) and *In Re Anastaplo*, 366 U.S. 82 (1961), has decided that he is not entitled to be admitted under these circumstances.

STATEMENT OF THE CASE

Petitioner is a life-long resident of the State of New York. (Ohio residence is not a requirement for admission to the Ohio bar examination or to the practice of law in Ohio, but petitioner's New York residence and his previous admission to the New York Bar are relevant to his unwillingness to comply with Rule XVII of the Rules of Practice of the Supreme Court of Ohio.) In June, 1968, petitioner was graduated from the New York University

School of Law. In July, 1968 he took the New York bar examination.

On or about August 28, 1968 petitioner came to Columbus, Ohio, on assignment by the VISTA program of the United States Government Office of Economic Opportunity. On October 31, 1968 the New York State Board of Law Examiners announced that petitioner had passed the New York bar examination. On November 31, 1968 petitioner completed and filed his application for admission to practice law in New York (Appendix, page 11a). In his application for admission to practice law in New York, the following questions and answers appear (Appendix, pages 17a-18a):

> "19. Do you believe in the principles underlying the form of government of the United States?
>
> "Yes.
>
> "20. State whether you have been or are a member of any party or organization engaged in propagating or pledged to effect changes in the form of government provided for by the United States Constitution, or in advancing the interests of a foreign country? If so, state the facts fully.
>
> "No.
>
> "21. Can you conscientiously, and do you, affirm, without any mental reservation, that you have been and are loyal to the government of the United States?
>
> "Yes."

Petitioner also answered the following question (Appendix, page 19a):

> "26. State in a general way your plans for the future in the legal profession if you are approved by the Character Committee and admitted by the Court.
>
> "My immediate plans revolve around the area of poverty law which has been exposed to me through VISTA. I would like to work for legal aid or apply for a Smith Fellowship when my VISTA period expires. Beyond this, I have plans to open my own office as a general practitioner and eventually specialize as a criminal lawyer."

On December 2, 1968 petitioner was admitted to the practice of law in New York. Petitioner returned to Columbus, Ohio, and on December 23, 1968 he completed his application for admission to the Ohio bar examination. In his Applicant's Questionnaire (which is usually filed within 120 days after entering law school) the following questions and answers appear (Appendix, pages 24a-25a):

"12. State whether you have been, or presently are:

"(a) a party to any action or legal proceeding including civil, criminal, quasi-criminal, administrative, or any proceeding in the juvenile court.

"Yes—minor traffic offenses.

"(b) Addicted to the use of narcotics, drugs, or intoxicating liquors.

"No.

"(c) Treated for mental illness.

"No.

"(d) Adjudged incompetent by any court.

"No.

"(e) Committed to or confined in any mental or correctional institution.

"No.

"(f) Adjudicated a bankrupt or placed under a receivership.

"No.

"(g) A member of any organization which advocates the overthrow of the government of the United States by force.

"I will not answer this question under my right as guaranteed by the Fifth Amendment of the U. S. Constitution.

"If your answer to any section of the above question is 'Yes,' set forth the facts in detail, designating by letter the portion of the question to which you refer. Include names of cases and dates of all court proceedings, the disposition made thereof, and the name and address of the court in which the record may be found.

"(a) Conviction, upon a plea of guilty, to a charge of speeding.

"(1) In Municipal Court of Rochester, New York, in October, 1961; sentence was suspended.

"(2) In Justice Court of Batavia, New York, 10-13-64—$10.00 fine.

"13. List the names and addresses of all clubs, societies or organizations of which you are or have been a member.

"(a) I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution."

In his Applicant's Questionnaire for Bar Examination the following question and answer appears (Appendix, page 30a):

"7. List the names and addresses of all clubs, societies or organizations of which you are or have been a member since registering as a law student.

"I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution."

The questionnaires were duly forwarded by the Clerk of the Supreme Court of Ohio to the bar admission committee of the Columbus Bar Association. On January 23, 1963 petitioner was interviewed by J. Richard Lumpe and Richard Snodgrass, members of the committee. Their reports appear in the Appendix at pages 32a to 35a.

There is nothing adverse to petitioner to be found in either committee member's report except petitioner's refusal to answer the questions on the questionnaires. Mr. Snodgrass noted:

"I found Mr. Stolar to be honest and forthright. His statements evidenced also a certain commitment to principle for its own sake, an unusually great amount of social awareness, and a degree of self-interest not reprehensible. On the basis of the interview and the background actually revealed in Mr. Stolar's applications I have no reluctance to recommend Mr. Stolar for admission to the practice of law.

"My recommendation is qualified, however, in that I can recommend him only if the committee as a whole is willing to recommend his admission despite his refusal, with full notice of the possible consequences, to

answer questions on the applications touching on his present and former organizational membership.

"Two questions on each application Mr. Stolar, relying on the Fifth Amendment, refused to answer on the ground that such questions go to matters not properly within the subject matter of such an inquiry. He rejected the argument that the Court, an agency of the State and of which he is to be a servant, has a right to inquire into such matters and to receive his full cooperation in doing so. He did state in response to direct questions that he is not now and has never been a member of the Communist Party, of any socialist party, or of the Students for a Democratic Society, and stated that he has signed the standard U. S. Army preinduction security oath, which has reference to the 'Attorney General's list.' "

Mr. Lumpe reported:

"Mr. Snodgrass and myself advised Mr. Stolar of the consequences of his refusal to answer these questions. After receiving this advice and stating he understood the matter, Mr. Stolar still refused to answer the above listed questions. His reason for refusing to answer was based on the premise that the questions were not pertinent to his moral and character fitness as an applicant. His principles and personal convictions would not allow him to answer these questions.

"Based on my investigation I find Mr. Stolar to be a very learned person and a very pleasant person, but I cannot recommend him for admission due to the fact he places himself above the rules of the Court and feels that he cannot abide by them when they run afoul of his personal convictions. I also cannot recommend him for admission since I was unable to fully complete the necessary investigation into his moral and character fitness due to his refusal to allow a complete investigation to be made."

On February 7, 1969, the chairman of the admissions committee wrote to petitioner (Appendix, page 36a). The chairman concluded:

"The Admissions Committee of the Columbus Bar Association has considered your application for admission to the Ohio bar examination. The Committee

has voted to deny your application unless by February 21, 1969, you answer questions 12(g) and 13 of applicant's questionnaire for admission to bar examination.

"Upon receipt of the answers to these questions the investigating committee will further consider your application."

On February 10, 1969, petitioner, in a letter to the chairman of the admissions committee, reiterated his refusal to answer the questions (Appendix, page 37a), concluding:

"It is my belief that such questions are not within the proper scope of review for a bar association committee on admissions and, in any event, the answers to such questions are protected by the First and Fifth Amendments of The United States Constitution."

On February 18, 1969, the chairman of the admissions committee wrote to the Clerk of the Supreme Court (Appendix, page 39a). The chairman said:

"In view of Mr. Stolar's refusal to answer the questions above referred to, the admissions committee of the Columbus Bar Association recommends that Mr. Stolar's application for admission to the Ohio bar examination be denied."

On February 18, 1969, petitioner wrote to the Clerk of the Supreme Court requesting him to bring the Association's recommendation to the attention of the Supreme Court for final action. As part of its standard procedure where an applicant has been admitted in another state, the Supreme Court of Ohio had obtained a copy of petitioner's New York application, and this was considered together with all other papers and correspondence submitted by petitioner and the admissions committee. At its regular Conference on Thursday, February 27, 1969, the Supreme Court of Ohio voted to deny petitioner admission to the March, 1969 bar examination and the following journal entry was made (Appendix, page 1a):

"The Court coming now to consider the application of Martin Robert Stolar, the recommendation of the

Committee on Admissions of the Columbus Bar Association and the memorandum and materials submitted by counsel for Mr. Stolar, finds that oral argument in this matter is not necessary, and that the recommendation of the Committee on Admissions should be approved.

"It is, therefore, ordered that the application of Martin Robert Stolar to be admitted to the March, 1969 Ohio bar examination be denied."

On March 31, 1969, petitioner filed a petition for a writ of certiorari in this Court. Petitioner has not applied to take the July, 1969 bar examination.

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

The people of Ohio have a substantial and continuing interest in the quality and caliber of the young men and women who are admitted to the practice of law in Ohio. The people of Ohio, by constitutional mandate, have placed the sole responsibility for insuring the caliber and quality of the young men and women admitted to the practice of law on the Supreme Court of Ohio.

As our society becomes more complex and our legal relationships more intricate, this responsibility of the Supreme Court of Ohio increases in importance. No other profession licensed by the State has as great a duty to the people of Ohio whom it serves, is more often involved in fiduciary relationships or required to rise above human frailties, personal prejudices, desires and convictions than the lawyers who have been admitted to practice before the Supreme Court of Ohio. As was so ably stated by the late Mr. Justice Frankfurter in his concurring opinion in *Schware v. Board of Bar Examiners,* 353 U.S. 232 at 247 (1957):

"* * * [A]ll the interests of man that are comprised under the constitutional guarantees given to 'life, liberty and property' are in the professional keeping

> of lawyers. It is a fair characterization of the lawyer's responsibility in our society that he stands 'as a shield,' to quote Devlin, J., in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character.' "

The power, indeed, the duty to require high standards not only of professional skill but also fitness of character and the concommitant power and duty to exclude any applicant who lacks such qualifications have been previously recognized by this Court. *Schware v. Board of Bar Examiners, supra,* at page 239; *Konigsberg v. State Bar of California,* 366 U.S. 36, at pages 40 to 41 (1961); *Spevack v. Klein,* 385 U.S., page 511 at 523 (1967) (dissenting opinion by Harlan, J.); *Barsky v. Board of Regents,* 347 U.S. 442 (1954).

The Supreme Court of Ohio, acting through the admissions committees of the local bar associations, must have some means reasonably to determine which applicants possess the necessary qualifications to be admitted to the practice of law. Questionnaires constitute one of the means of obtaining information on which to base such determinations. In addition, interviews by the admissions committees substantiate and supplement the questionnaires in making the necessary determinations. With respect to the interview phase, this Court has held as follows:

> "* * * This interrogation may well be of decisive importance for, as all familiar with bar admission proceedings know, exclusion of unworthy candidates frequently depends upon the thoroughness of the Committee's questioning revealing as it may infirmities in an otherwise satisfactory showing on his part. This is especially so where a bar committee, as is not infrequently the case, has no means of conducting an independent investigation of its own into an applicant's

qualifications." (*Konigsberg v. State Bar of California, supra,* at p. 42.)

The interview and questionnaire in the instant case are especially important because petitioner is not a resident of Ohio and his character references are not known by members of the local admissions committee. At the time of his application, petitioner had been in Ohio less than six months. It would have been a practical impossibility for the admissions committee of the Columbus Bar Association in Columbus, Ohio, to conduct an investigation in the State of New York. The Admissions Committee of the Columbus Bar Association is made up of practicing attorneys who contribute their time and efforts to this very vital and important cause. These members take valuable hours of time out of their work days with interviews arranged at the convenience of the applicant whose law school schedule and other problems are understood and taken into consideration by the committee, in order to conduct the interviews as required by the Supreme Court of Ohio. Petitioner declined to furnish information which the committee needed in order to make its determination as to his qualifications. Since the committee was unable to complete the necessary investigation, it had no choice but to refuse to recommend him for admission.

It is not contended that petitioner should be required to disclose any information which might tend to incriminate him. Petitioner has the right to refuse to answer any question on that basis. Petitioner's right to remain silent, however, does not excuse him from satisfying the required standards to be admitted to the practice of law in Ohio. If an applicant can thwart the investigation by his refusal to answer relevant questions, the Supreme Court of Ohio cannot properly determine his qualifications.

> " * * * The Court has repeatedly recognized that it is permissible to deny a status or authority to a

> claimant of the privilege against self-incrimination if his claim has prevented full assessment of his qualifications for the status or authority. Under this rule, the applicant may not both decline to disclose information necessary to demonstrate his fitness, and yet demand that he receive the benefits of the status. He may not by his interjection of the privilege either diminish his obligation to establish his qualifications, or escape the consequences exacted by the State for a failure to satisfy that obligation." (*Spevack* v. *Klein, supra,* at p. 526) (dissenting opinion by Harlan, J.)

To the same effect see also: *Konigsberg* v. *State Bar of California, supra; In Re Anastaplo,* 366 U. S. 82 (1961); *Orloff* v. *Welloughby,* 345 U. S. 83 (1963).

The obstruction to the investigation of the committee in the instant case is more significant than that in the *Konigsberg* or *Anastaplo* cases, *supra.* There, the applicants refused to answer questions concerning membership in the Communist Party. Here, petitioner has also refused to name any clubs, societies or organizations of which he is or had been a member. Because of petitioner's refusal to answer these questions the committee was "unable to complete the necessary investigation into his moral and character fitness." (Appendix, p. 33a). As this Court recognized in *Konigsberg v. State Bar of California, supra,* at pp. 46-47, the requested information may provide a valuable insight into the applicant's character and open new areas of investigation. By the same token, the answers might show little need to proceed further with the investigation. The crucial point is that since petitioner refused to answer either of the questions, the admissions committee could not make a final determination concerning his character and fitness for admission to the practice of law.

The two questions at issue in this case are not attempts by the Supreme Court of Ohio to delve into or assess the political beliefs or philosophies of the petitioner. The pur-

pose of the questions is to insure, to the extent possible, that those persons admitted to practice before the Supreme Court of Ohio will satisfy the high standard of conduct toward courts, clients and the public which is required of a practicing lawyer. In addition, and especially important in the case of any nonresident applicant, knowledge of such organizations and associations might well direct the committee's attention to persons familiar to them who have known the applicant over a period of time to whom the committee could turn for further information concerning whether petitioner meets the required standards.

If, for example, petitioner's memberships in associations and clubs evidenced or indicated a long-term and continuing disrespect or disregard for law, certainly this would be germane in determining whether additional investigation would be required. By the same token, if the list of associations and clubs raises no question concerning petitioner's meeting the minimum standards, this also assists the committee in making its determination. Furthermore, if petitioner had belonged to an organization which espoused illegal aims, knowledge of such membership would enable the committee to investigate further to determine whether petitioner did, at the time of such membership, also espouse such illegal aims or whether he now espouses such illegal aims.

If petitioner had answered the questions and was denied admission to the Ohio bar examination because of his membership in a given organization, regardless of whether such organization had illegal aims and regardless of whether petitioner espoused then or now such illegal aims, then the case at bar might have some substance. But, none of the issues set forth on page two of the petition for a writ of certiorari are involved in this case. They may be relevant in other cases, but not here. The only

issue presented in this case is whether or not a state may properly deny admission to the practice of law to an applicant who, by his refusal to answer material questions, obstructs the admissions committee in its investigation concerning his character. This issue was fully considered and properly decided by this Court in the *Konigsberg* and *Anastaplo* cases, *supra*.

This case has none of the elements of harassment or personal antipathy on the part of committee members toward the applicant which concerned the dissenting justices in those cases. Indeed, in the instant case, the interviewers found petitioner "honest and forthright", "very learned" and "very pleasant" and expressed regret that he refused to assist the committee in completing its investigation (Appendix, pp. 32a-35a).

Petitioner based his refusal to answer these questions on his privilege against self-incrimination. He provided similar information, however, in his application for admission to the New York Bar. In addition, petitioner told the interviewers that he was not and had never been a member of the Communist Party, any socialist party or of the Students for a Democratic Society, and that he has signed the standard U. S. Army pre-induction security oath, which has reference to the "Attorney General's list." If, in fact, the information disclosed would tend to incriminate him, petitioner waived his right to claim the privilege by completing the New York application and by voluntarily furnishing such information to the committee. *Brown* v. *Walker*, 161 U. S. 591 (1896); *Rogers* v. *United States*, 340 U. S. 367 (1951). Even if petitioner's answers on the New York application and his oral statement to the interviewers did not amount to a waiver, they cast doubt on his good faith in continuing to claim the privilege as to the questionnaire.

REASONS WHY THIS CASE IS UNLIKE NO. 1079, BAIRD V. STATE BAR OF ARIZONA IN WHICH CERTIORARI HAS BEEN GRANTED

On April 4, 1969, U. S. this Court granted a writ of certiorari in No. 1079, *Baird* v. *State Bar of Arizona*. There are two substantial differences between this case and the *Baird* case: the nature of the questions which the applicant refused to answer and the deprivation caused by the refusal to admit the applicant to the practice of law.

Mrs. Baird answered fully, under oath, the following question: "List all organizations, associations and clubs (other than bar associations) of which you are or have been a member since attaining the age of 16 years." She refused to answer the question: "Are you now or have you ever been a member of the Communist Party or any organization that advocates overthrow of the United States government by force or violence?" She contends that her refusal to answer that question is protected by the First, Fifth and Fourteenth Amendments to the United States Constitution. She further argues that the question is redundant since a truthful answer, which must be presumed, to the previous question concerning organizations, associations and clubs would include the Communist Party or any similar organization. Therefore, it does not appear that her refusal to answer the Communist Party question obstructed the Arizona investigation.

In the instant case petitioner refuses to answer the question concerning membership in organizations, associations and clubs, and this single fact makes a very great difference. Petitioner's refusal to answer this question substantially obstructs the bar association committee in fulfilling its responsibility to evaluate his character, a responsibility made more difficult to fulfill by the fact that he was from

another state and his references were unknown to the committee either personally or by reputation.

As to the nature of the deprivation caused by refusal to admit these applicants to practice, Mrs. Baird suffers a considerable loss. She is a permanent resident of Arizona, and her husband is already admitted to the practice of law in Arizona. She is not admitted to practice in any other state. Petitioner is admitted to practice in New York where he maintains his permanent legal residence (Appendix, page 21a), and he does not seem to be hindered in any way in fulfilling his VISTA assignment or pursuing his chosen profession thereafter.

It is respectfully submitted that the facts herein are sufficiently unlike No. 1079, *Baird v. State Bar of Arizona*, that this case would not be an appropriate companion when this Court undertakes to resolve the issue raised by that case.

CONCLUSION

The Attorney General and the Columbus Bar Association respectfully submit that the Supreme Court of Ohio may properly deny admission to its Bar to any applicant who, by his refusal to answer material questions, obstructs the investigation into his character; and that this issue was fully considered and properly decided by this Court in the *Konigsberg* and *Anastaplo* cases. In addition, petitioner in this case has given the admissions committee and the Supreme Court of Ohio reason to doubt his sincerity in claiming a privilege which he did not claim in New York five weeks earlier and by refusing to answer in written form which he answered, in part, orally.

The petition for a writ of certiorari should be denied.

PAUL W. BROWN,
Attorney General of Ohio
SHELBY V. HUTCHINS,
Chief Counsel
Columbus Bar Association
JACK R. ALTON, *President*
WILLIAM H. SCHNEIDER,
Chairman Admission to the Bar Committee
Attorneys for Respondent.

APPENDIX A
JOURNAL ENTRY OF THE SUPREME COURT OF OHIO

The Court coming now to consider the application of Martin Robert Stolar, the recommendation of the Committee on Admissions of the Columbus Bar Association and the memorandum and material submitted by counsel for Mr. Stolar, finds that oral argument in this matter is not necessary, and that the recommendation of the Committee on Admissions should be approved.

It is, therefore, ordered that the application of Martin Robert Stolar to be admitted to the March, 1969, Ohio Bar Examination be denied.

APPENDIX B
RULE XVII
ADMISSION TO THE PRACTICE OF LAW

Section 1. General Requirement.

Except as provided in Section 8 of this rule, to be admitted to the practice of law in Ohio, a person must

(A) be a citizen of the United States;

(B) be 21 years of age;

(C) have earned, prior to admission to law school, a bachelor's degree approved by the Court or earned in a college or university approved by one of the following accrediting associations: Middle States Association of Colleges and Secondary Schools, New England Association of Colleges and Secondary Schools, North Central Association of Colleges and Secondary Schools, Northwest Association of Secondary and Higher Schools, Southern Association of Colleges and Secondary Schools, and the Western College Association;

(D) have a degree from a law school which is approved by the American Bar Association and if located in Ohio, is also a member of the League of Ohio Law Schools;

(E) be approved as to character under procedures provided in this rule;

(F) have passed an examination conducted by the Ohio Board of Bar Examiners; and

(G) have taken the oath of office.

Section 2. Preliminary Registration Requirements.

(A) Every person who intends to take the Ohio bar examination shall file with the Clerk of this Court, within 120 days after entering law school, an application for registration as a candidate for admission to the practice of law

on a form prescribed and furnished by the Court. The application shall be accompanied by

(a) a certificate of the dean of the law school showing that the applicant has begun the study of law;

(b) a properly authenticated transcript of college credits showing that prior to admission to law school the applicant has earned a bachelor's degree;

(c) a character questionnaire in duplicate prescribed and furnished by the Court;

(d) a fingerprint identification on the form used by the Federal Bureau of Investigation; and

(e) a registration fee of twenty dollars. (Effective Sept. 1, 1963.)

Section 3. Character Investigation.

(A) The president of each local bar association shall appoint a Committee on Applicants for Admission to the Practice of Law consisting of three or more members each of whom shall serve without compensation for a term of three years. One-third of the committee member's terms shall expire each year. These committees shall be responsible for investigating the character, reputation and moral qualifications of applicants and shall report their findings and recommendations to the Clerk of this Court.

(B) If the applicant is a resident of Ohio, one copy of the questionnaire required by Section 2 shall be forwarded by the Clerk to the Committee on Applicants for Admission to the Practice of Law in the county where the applicant claims permanent residence.

(C) In conducting the investigation, the local committee shall utilize the applicant's character questionnaire and shall also obtain answers to questionnaires from three citizens in the county, none of whom is related to the applicant. Two members of the committee shall personally interview

the applicant and record the results on a form prescribed by the Court.

(D) This Court shall determine from the report of the local bar association committee and from other available information whether the applicant shall be accepted for registration. The Clerk shall notify each applicant concerning the acceptance or rejection of the application.

(E) If the applicant is a nonresident, the Clerk shall take such steps as are feasible to provide for character investigations as nearly as possible in conformity to the above procedures.

Section 4. Application for Examination.

(A) Applications to take the examination shall be filed with the Clerk of this Court at least 90 days before the time fixed for the examination. Each application shall be accompanied by

(a) the applicant's affidavit that he has read and studied the Canons of Professional Ethics adopted by the American Bar Association and approved by this Court;

(b) a certificate from the law school that the applicant has or will have received a law degree, is a person of good moral character, has sufficient knowledge and ability to discharge the duties of an attorney at law and has received instruction in legal ethics;

(c) a questionnaire in triplicate furnished by the Court updating the information on character and moral fitness furnished at the time of registration; and

(d) a fee of forty dollars refundable only in the event of disapproval. (Effective September 1, 1963.)

(B) This Court shall pass on the application and the Clerk shall notify the applicant of the Court's approval or disapproval.

Section 5. Bar Examination.

(A) The bar examination shall be prepared and conducted under the direction of the Board of Bar Examiners appointed by the Court and consisting of ten members of the bar of Ohio. The members of the board shall serve terms of five years and shall be so appointed that the terms of two examiners will expire each year.

(B) Two examinations shall be held each year in Columbus. One shall begin on the first Tuesday in March and the other on the last Tuesday in July. Each examination shall continue for three days and shall be divided into six half-day sessions. Each examiner shall prepare and submit five questions, of which the applicants shall answer four. The subject matter of the questions shall not be designated or labeled.

(C) The examination shall consist of the following:

Subjects	Number of Questions
Business Associations (including Agency, Partnership and Corporations)	8
Constitutional Law	5
Contracts	5
Criminal Law	2
Equity, Trusts and Wills	8
Evidence	5
Negotiable Instruments	2
Property (Real and Personal)	5
Pleading and Practice	5
Torts	5

(D) No applicant shall be admitted to the practice of law unless a grade of 75 per cent is received on the examination. The grades as determined by the Board of Bar Examiners shall be final.

(E) The Board of Bar Examiners may, subject to the

approval of the Court, promulgate additional rules to aid in the conduct of the examinations.

Section 6. Re-Examination.

(A) Applicants for re-examination may apply for admission to the March examination only. No applicant will be admitted to more than three examinations.

(B) Applications must be filed with the Clerk of this Court at least 90 days before the time fixed for examination.

(C) Before being admitted to the examination, the applicant must again be approved by the local Committee on Admissions to the Practice of Law.

(D) Each application for re-examination, submitted on a form prescribed by the Court, must be accompanied by a fee of sixty dollars refundable only in the event the application is disapproved. The fee for a second re-examination is seventy dollars.

Section 7. Induction to the Bar.

(A) Each successful applicant and each person admitted under Section 8 must sign a roll designating his residence and take the following oath of office:

I Do Solemnly Swear:

I will support the Constitution of the United States and the Constitution of the State of Ohio;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and I will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed or delay any man's cause for lucre or malice. So HELP ME GOD.

(Clerk's note: This form of oath was adopted January 25, 1910. It is the form recommended by the American Bar Association.)

(B) A fee of ten dollars shall be charged for each certificate of admission. A charge of one dollar shall be made for a duplicate certificate of admission.

Section 8. Admission Without Examination.

(A) An applicant for admission to the practice of law in Ohio without examination must file the following with the Clerk of this Court:

(a) a certificate of admission as an attorney at law in the highest court of another state or in the District of Columbia;

(b) a certificate, signed by a judge of a court of record of the state from which he seeks admission, indicating that the applicant is of good moral character and is in good standing in the bar of that state;

(c) certificates evidencing education equal to the requirements prescribed by this Court for admission to the practice of law in Ohio in effect at the time the applicant was admitted in such other state;

(d) evidence showing that applicant has, for at least five years, engaged in legal work of such character and

description as shall satisfy this Court that the applicant possesses the legal skills deemed adequate for admission to the practice of law in Ohio without examination;

(e) a certificate by an attorney at law of this state that the applicant is of good moral character and recommending him for admission to the practice of law in Ohio;

(f) applicant's affidavit that he is a citizen of the United States and that he is a resident of this state or intends to come into the state for the purpose of making it his permanent residence (if the applicant is not a resident of Ohio, his certificate shall not be issued until he has established residence in this state);

(g) an application and questionnaire, in duplicate, for use by the National Conference of Bar Examiners in making a character investigation;

(h) a fingerprint identification card on the form used by the Federal Bureau of Investigation;

(i) a nonrefundable fee of one hundred and fifty dollars.

(B) This Court shall pass on the application, and the Clerk shall notify the applicant of the Court's approval or disapproval.

APPENDIX C

Art. IV, Sec. 2(B)(1)

(B) (1) The supreme court shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

APPENDIX D
Art. IV, Sec. 5(B)

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

APPENDIX E
QUESTIONNAIRE APPLICATION FOR ADMISSION TO PRACTICE LAW IN NEW YORK
APPELLATE DIVISION: SUPREME COURT
FOURTH JUDICIAL DEPARTMENT
State of New York

YOU MUST ANSWER ALL QUESTIONS FULLY.

1. Please state:

(a) your full name, and if name ever was changed, give former name, date and reason therefor.

Martin Robert Stolar

(b) age, and date of birth.

Born April 2, 1943. Twenty-five years old as of this date.

(c) place of birth.

Syracuse, New York

(d) now living with *Sigmund and Jessie Stolar*
Relationship? *Father and Mother*
at No. *18 College Complex Circle*
in the *City* of *Rochester* N.Y. *14623*
Zip Code

(e) length of actual residence in the State of New York, prior to the date of this application.

From birth until August 28, 1965.

(f) whether married or single.

Single.

If married, when, where and to whom.

(g) Has any marriage to which you were a party been terminated by divorce or annulment, or affected by a separation? If so, state fully in answer to question 16 all pertinent, material facts.

Never been married.

(h) Are you a citizen of the United States?

Yes

(i) If naturalized, state when and where.

(j) If citizenship is claimed through the naturalization of a parent, set forth the facts.

2. If you have not always resided at the address stated at 1(d) state when and where you resided elsewhere.

4/43-10/46 425 Glenwood Ave., Syracuse, N.Y.
10/46- 6/65 37 Highland Parkway, Rochester, N.Y.
6/65- 9/65 365 W. 25th St., New York, N.Y.
9/65- 6/66 33 Washington Sq. W., New York, N.Y.
6/66- 9/66 118 E. 19th St., New York, N.Y.
9/66- 8/68 55 E. 10th St., New York, N.Y.
9/68-present 999 Caldwell Pl. Apt. 1409, Columbus, Ohio 43203

3. State the name, residence, birthplace and occupation of your parents, if living. If either parent be dead, so state, and give name, last place of residence and occupation.

Father: Sigmond Stolar Age 57 Occupation: Salesman
18 College Complex Cir. Rochester, N.Y. 14623 Birthplace: New York, N.Y.

Mother: Jessie Stolar Age 52 Occupation: Bookkeeper
(same as father) Birthplace: Cranberry, N.J.

4. State all the schools below college grade which you have attended and between what dates. If you are a high school graduate, so state, giving name of school, date of graduation, and name of principal at graduation.

Elementary School: School #24, Rochester, N.Y. 9/48-6/56

High School: Monroe High School, Rochester, N.Y. 9/56-6/61

Principal at Graduation: Mary A. Sheehan.

5. State whether you attended college? If so, state what college and when, specifying dates. What academic degree, if any, have you received? If you did not receive a degree, state the reasons. State what sessions you attended, whether full or part time, day, evening, extension or summer attendance.

   I attended the University of Rochester from 9/61 until 6/65, when I graduated with an A.B. I was a full time day student and majored in political science.

6. State whether you attended a law school? If so, state what school and when, specifying dates. What degrees in law, if any, have you received? If you did not receive a degree, state the reason. State what sessions you attended, whether full or part time, day, evening, extension or summer attendance.

   I attended, as a full time day student, New York University School of Law from 9/65-6/68, when I graduated with a J.D. Degree.

7. State whether you have ever been dropped, suspended, or expelled from any school, college, law school, or other similar institution? *No.*
   If your answer be yes, state the school, the cause and the circumstances.

8. State how many times you have taken the New York State Bar Examinations, and date of your final examination?

   I have taken the Bar Examination only once: July 18 and July 19, 1968.

9. State whether you have been employed by another in

any occupation, business, or profesison other than the law? If so,

Yes

(a) Give name and address of each employer, the business, the position you occupied and the month and year of the beginning and ending of each employment.

(1) Jewish Young Men's & Women's Ass'n. Summer Camp—Kitchen Asst. Summer 1960

(2) Diamond Fish Fry—Retail Fish Sales—Counter clerk—4/61-12/61

(3) JYM&WA—Coat checker—9/61-12/61

(4) Rochester Coca-Cola Bottling Corp.—laborer Summer 1961

(5) Driver's Asst. Summer 1962

(6) Cilman & Cilman—Retail Meat Sales—Bill Collection and Delivery—Fall, 1962

(7) Rochester Cafeteria Services, Inc.—Retail Prepared Food Sales—worked as counter and grillman 9/62-6/65

(8) New York University—Desk Clerk—Summer, 1966

(9) —Language Laboratory Ass't. Summer and Fall, 1966

(10) Tennis Club of Rochester—Snack Bar Manager—Summer, 1967

(b) Were you so employed at the same time that you were attending school, college or law school?
The jobs with the following numbers were held while attending college: (3), (6), (7). During law school job number (9) was held.

10. State whether you have been discharged by any employer? If so, state the cause and the circumstances.

I have never been discharged by any employer.

11. State whether you have been engaged on your own account in any occupation, business, or profession other than the law? If so,

No

(a) Give in detail the nature and location thereof and the month and year of the beginning and ending of your engagement.

(b) if a partnership, give the names and addresses of all partners.

(c) state whether or not you were so engaged at the time that you were attending school, college or law school.

12. State the law offices, including the law department of any corporation, with which you have been connected, with address of each, nature of your connection and services, and the month and year of the beginning and ending thereof.

(1) Edward S. Regan Esq.
4806 White Plains Rd. — *I was clerk and typist*
Bronx, N.Y. — *from 6/65-9/65*

(2) Ballon, Stoll and Shyman, Esqs.
1450 Broadway — *I was law clerk from*
New York, N.Y. — *6/66-9/66*

(3) Multer, Nova & Seymour
120 Broadway — *I was law clerk from*
New York, N.Y. — *7/67-9/67*

13. State whether you have ever applied for admission to practice as an attorney or counselor in any court in any state or country other than the State of New York? If so, state specifically the place and disposition made of the application. If your application was granted, state whether you were admitted, giving the name of the court by which admitted, the date and place of such

admission, the period of practice, and the office addresses where you have practiced, and attorneys or firms with whom associated.

No application ever made.

14. State whether you have been reprimanded, censured, disciplined, suspended or disbarred as an attorney or counselor at law, solicitor or barrister, and have any charges ever been preferred against you, and if so, with what result?

Never

15. State whether you have ever previously applied for admission to the bar of the State of New York? If so, where, when, and with what result?

Never previously applied.

16. State whether you have been

(a) a party to, or otherwise involved in, any legal proceeding, either civil or criminal? If so, state the date, place, court, and judgment rendered.

I have never been such a party.

(b) called as a witness or testified in any legal proceeding. If so, state facts fully.

I have never been called as a witness.

(c) charged with a crime or arrested. If so, state facts fully.

I have never been charged with a crime.

(d) summoned for a violation of any law, corporate ordinance, or regulation of any department of a municipal corporation. If so, state facts fully.

I received a ticket for speeding on the N.Y. Thruway on 10/11/64. The Justice Court in Batavia, N.Y. convicted me upon a plea of guilty, on 10/13/64 and disposed of the case with a $10.00 fine. I also was convicted of a traffic offense (speeding) in the City of Rochester in the Fall of 1966 and

sentence was suspended upon a guilty plea. The exact records here are lost to me.

17. State whether there are any favorable or unfavorable incidents in your life, whether at school, college, law school, business, or otherwise, not called for by the questions answered herein or disclosed in your answer thereto? If so, state the facts fully.

I can remember no unfavorable incidents. Favorable incidents include a number of scholastic awards throughout my schooling including my election as Administrative Director of the NYU Law School Moot Court Board. While in Law School I was awarded a Resident Fellowship by N.Y.U. and served as a graduate advisor in an Undergraduate Dormitory. One final favorable incident was my acceptance into and service in VISTA—a Volunteer In Service To America as part of the overall "War on Poverty" from the Office of Economic Opportunity.

18. State whether you have participated in activities of a public or patriotic nature or in philanthropic, religious, or social services? If so, state the facts fully.

I was a Cub Scout and Boy Scout and Explorer Scout during elementary and high school.

I also participated fully in my Temple's religious education programs until I went to college.

In addition, my time spent as a VISTA is a service of the above described nature.

19. Do you believe in the principles underlying the form of government of the United States?

Yes.

20. State whether you have been or are a member of any party or organization engaged in propagating or pledged to effect changes in the form of government provided for by the United States Constitution, or in

advancing the interests of a foreign country? If so, state the facts fully.

No.

21. Can you conscientiously, and do you, affirm, without any mental reservation, that you have been and are loyal to the government of the United States?

Yes.

22. Give the names and addresses of persons, other than those who have furnished character affidavits, to whom you refer as to your character, and state how long you have known each.

(1) Robert A. Quigley, 79 Greenwich Ave., New York, N.Y. 11 years

(2) Mr. and Mrs. Jonathan Alpert, 2724 Brownshore Rd., Louisville, Ky. 8 years

(3) Mr. and Mrs. Harry Malley, 83 Highland Pkwy. Rochester, N.Y. 20 years

(4) Mr. Sam Phillips, 151 Alaimo Drive, Rochester, N.Y. 25 years

23. State whether you have had military service? (If so, give date of entry into and discharge from service and state whether you were honorably discharged therefrom.)

I have had no military service.

24. (a) Have you studied the Canons of Ethics adopted by the American Bar Association?

Yes.

(b) Do you unconditionally subscribe to the same?

Yes.

(c) Will you conscientiously endeavor to conform your professional conduct to them?

Yes.

25. State fully the various reasons for your desire to adopt the practice of the law as a profession.

Early in my college years, when I first began to think of a life's work, I sought out the law chiefly because it

was not a static field. As I matured I saw that the law not only changed as it developed but it was capable of producing social change.

In addition, the practice of law would give me a chance to become knowledgable [sic] *in many other fields—a kind of Renaissance-man profession, I had, and still have, no desire to channel all my life's work into one specialty and prefer the flexibility which the legal profession offers.*

26. State in a general way your plans for the future in the legal profession if you are approved by the Character Committee and admitted by the Court.

My immediate plans revolve around the area of poverty law which has been exposed to me through VISTA. I would like to work for Legal Aid or apply for a Smith Fellowship when my VISTA period expires.

Beyond this, I have plans to open my own office as a general practitioner and eventually specialize as a criminal lawyer.

Dated this *19th* day of *November*, 1968.

Signature of the Applicant MARTIN ROBERT STOLAR

State of New York:)
County of *Monroe*)ss.
City of *Rochester*)

Martin R. Stolar, being duly sworn, deposes and says: I am the applicant herein and have read the foregoing questions and have fully, truthfully and accurately answered the same. The foregoing answers and statements are true of my own knowledge, except as stated to be made upon information and belief, and as to such answers and statements I believe them to be true.

Signature of Applicant MARTIN R. STOLAR

Sworn to before me this *13* day
of *November*, 1968
/s/ [signature illegible]
Notary Public or Comm. of Deeds.

APPENDIX F
APPLICANT'S QUESTIONNAIRE
Before the Supreme Court of Ohio
In the Matter of the Application of
Martin Robert Stolar
For Registration as a Law Student

EXPLANATION AND INSTRUCTIONS: This questionnaire will provide The Supreme Court of Ohio and its Committees on Admissions to the Bar with information needed to determine your qualifications for registration as a law student. The information obtained may be used as a guide to further investigation. Answer all questions fully, truthfully and accurately.

Two completed typewritten (except for Item 16) copies of this questionnaire are to be submitted to the Clerk of The Supreme Court within 120 days after entering law school. If the space for any answer is inadequate, complete your answer on a separate attached sheet specifying the number of the question. Be sure to affix your signature to each additional sheet.

Only applications verified by the affidavit at the end of the questionnaire will be considered.

1. (a) Your full name *Martin* *Robert* *Stolar*
   First Middle Last
   (b) Have you ever used or been known by any other name? *No*
   If so, state in full each name used or by which you have been known, and briefly give the reasons therefor.
   (c) Has your name ever legally been changed? *No*
   If so, attached a certified copy of the order.
2. (a) Date of birth *April 2, 1943*
   (b) Place of birth *Syracuse, New York*
   (c) If you were born in a foreign country, state what

age you came to the United States.

(d) If you claim citizenship other than by birth in the United States, attach a certified copy of certificate of naturalization or other documentary evidence supporting your claim.

3. (a) Legal residence (permanent) address *18 College Complex, Rochester, N.Y.*

(b) Current residence address *Apt. 1409 999 Caldwell Pl., Columbus, Ohio*

(c) List every home address you have had since you were 14 years of age, giving the exact address of each, together with the month and year of the beginning and ending of each residence. (Exclude temporary addresses, such as those for summer vacation and during military service.)

Period	Street and Number	City and State	With Whom
Age 14-22 4/57 - 10/65	*37 Highland Parkway*	*Rochester, N.Y.*	*Parents*
Age 22-25 10/65 - 8/68	*18 College Complex Cir.*	*Rochester, N.Y.*	*Parents*

(d) Present business address, if any.....

4. (a) Are you married or single? *Single*

(b) Have you ever been married? *No*

(c) If you are married, state the date of marriage and wife's maiden name or husband's name.

(d) Have you ever been divorced?..... If so, give title and number of case, name of court granting decree, date of decree, by whom and on what grounds divorce was obtained.

5. (a) Father's name *Sigmund Stolar* Present residence *18 College Complex, Roch. N.Y.*

Mother's name *Jessie Stolar* Present residence *(same)*

Birthplace of father *New York City*

Birthplace of mother *Cranberry, New Jersey*

Past and present occupations or professions. (Be specific.)

Father *Salesman for West Disinfecting Company, Business Director for JYM&WA in Rochester, Salesman for PAECO, Inc. (present)*

Mother *Bookkeeper for Serv-Rite, Inc. in Rochester (present)*

(b) Give a complete list of your brothers and sisters, including their present addresses and occupations.

Name	Address	Occupation
Michael Stolar	*184 College Complex, Rochester*	*Electrician*
Jeffrey Stolar	*284 Colony Manor Dr., Rochester*	*Salesman*

6. (a) List all junior and senior high schools which you have attended.

Name and Location of School	Period of Attendance
Monroe High School Rochester	From *Sept 1956* to June *1961*

(b) List all colleges and universities which you have attended.

Name and Location	Day, Evening, Extension or Summer Attendance	Period of Attendance	Degrees and Date Received
University of Rochester	*Day*	From Sept *1961* to June *1965*	*A.B. June, '65*

(c) State the name of the law school to which you have been admitted or where you are currently enrolled. *New York University School of Law*

7. Have you ever been placed on probation, suspended, expelled or requested to terminate your enrollment by any high school, college, university, law school, or other similar institution? *No* If your answer is "Yes," give the name and address of the institution, the date and full particulars.

8. (a) Have you ever served in the armed forces of the United States? *No*

(b) Have you ever been a defendant in any courts-martial? *No*

(c) If your answer to (b) is "Yes," give the date, the nature of the charge, the facts pertaining to the case and the disposition thereof.

(d) What type of discharge or other separation document did you receive upon termination of your military service? *No*

(e) Have you ever been rejected for service in any branch of the armed forces of the United States? *No* If so, state the reason, date and other pertinent facts.

9. Give a complete statement of all employment, including businesses of your own in which you have been engaged, since you became eighteen years of age.

(all in Roch. unless otherwise noted)

Name and Address of Employer or Business	Period of Employment	Reason for Leaving
JYM&WA	From *6 1960* to *9 1960*	*summer work*
Diamond Fish Fry	From *9 1960* to *5 1961*	*store closed*
Coca-Cola Bottling Corp.	From *6 1961* to *9 1961*	*summer work*
Coca-Cola Bottling Corp.	From *6 1962* to *9 1962*	*summer work*
Cilman & Cilman	From *10 1961* to *4 1962*	*school workload*
Rochester Cafe Services	From *9 1962* to *6 1965*	*graduated from college*
Tennis Club of Rochester	From *6 1964* to *9 1964*	*summer work*
Edward J. Regan, Esq.	From *6 1965* to *9 1965*	*summer work (Bronx, N.Y.)*
Ballon, Stoll & Shyman, Esqs.	From *6 1966* to *9 1966*	*summer work (New York)*
New York University	From *6 1966* to *12 1966*	*summer work school workload (two different jobs)*
Multer, Nova & Seymour, Esqs.	From *7 1967* to *9 1967*	*summer work (New York City)*
United States Government Office of Economic Opportunity VISTA	From *8 1968* to *present*	*(Columbus, O.)*

10. (a) Have you ever been required to furnish a bond in connection with any office or employment? *No*

If your answer is "Yes," specify the type of office or position for which you were bonded, amount of the bond, name of the bonding company or other surety, and state whether anyone ever sought to recover upon your bond or to cancel it.

(b) Have you ever been refused a fidelity or other type bond? *No* If so, explain fully.

11. (a) Have you ever ben discharged or asked to resign by any employer? *No* If your answer is "Yes," to this question, state the circumstances.

(b) Have you ever held or applied for a license, or certificate, the procurement of which required proof of good character? *Yes* If so, state, as to each license, the date it was granted, the name and address of the authority issuing it, whether any license or certificate has been refused or revoked, and whether you have been reprimanded, censured, or otherwise disciplined as the holder of a license. *I am a member of the New York Bar, having been admitted by the Appellate Division, Fourth Department, Rochester, New York on December 2, 1968. I have never been reprimanded, censured or otherwise disciplined as a holder of this certificate.*

12. State whether you have been, or presently are:

(a) a party to any action or legal proceeding, including civil, criminal, quasi-criminal, administrative, or any proceeding in the juvenile court *Yes—minor traffic offenses*

(b) addicted to the use of narcotics, drugs, or intoxicating liquors *No*

(c) treated for mental illness *No*

(d) adjudged incompetent by any court *No*

(e) committed to or confined in any mental or correctional institution *No*

(f) adjudicated a bankrupt or placed under a receivership *No*

(g) a member of any organization which advocates the overthrow of the government of the United States by force *I will not answer this question under my right as guaranteed by the Fifth Amendment of the U.S. Constitution.*

If your answer to any section of the above question is "Yes," set forth the facts in detail, designating by letter the portion of the question to which you refer. Include names of cases and dates of all court proceedings, the disposition made thereof, and the name and address of the court in which the record may be found.

(a) Conviction, upon a plea of guilty, to a charge of speeding

1. In Municipal Court of Rochester, N.Y. in October, 1961; sentence was suspended.

2. In Justice Court of Batavia, N.Y. 10/13/64 —$10 fine

13. List the names and addresses of all clubs, societies or organizations of which you are or have been a member.

(a) *I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution.*

14. Are there any unsatisfied judgments against you? *No* If so, list the names and addresses of the holders and the amount due on each judgment.

15. Name five persons (exclusive of relatives) who have known you well for at least five years. (Provide current addresses for, and the occupation of each reference.)

Jonathan Alpert 2724 Brownsboro Rd. Louisville, Ky. Law Student

Marcia Alpert 2724 Brownsboro Rd. Louisville, Ky. Computer Programmer

Robert A. Quigley 79 Greenwich Ave. New York, N.Y. LIFE Magazine Circulation Manager

Harris H. Rusitzky 1577 Monroe Ave. Rochester, N.Y. Corporation Owner and President (Food Service)

Sam Phillips Council of Social Agencies Rochester, N.Y. Professional Social Worker

16. State in your own handwriting in a paragraph not to exceed 100 words your reasons for desiring to be an attorney at law.

My main reason for desiring to be an attorney is that the law is an ever-changing field—it continually develops and does not remain static or stagnant. Consequently it differs from a great many other fields into which I could have gone as a career. Secondanly, [sic] *the law can be an effective tool for molding the social change so necessary today. Working with and within the law to produce such change is, for me, the most important contribution I can make to the society in which I live.*

17. (a) Has your conduct ever been questioned, to your knowledge, with reference to the unauthorized practice of law? *No*

(b) Have you ever been employed or otherwise connected with any person, firm or corporation whose conduct was questioned, to your knowledge, on the subject of unauthorized practice of law while you were so employed or connected? *No*

If your answer is "Yes" to either part of this question, explain the facts in detail.

18. If you have ever held any public office either by election or by appointment, state the nature thereof, when and where. *None*

19. When and where did you last vote in a public election? *Nov, 1964 Rochester, N.Y.*

20. Have you ever been suspended, disqualified or disciplined as a member of any profession; have you ever been removed from any office, public or private, because of conduct reflecting upon your character; or have any charges been made or filed or proceedings instituted against you? *No* If your answer is "Yes," state the facts in detail.

AUTHORIZATION AND RELEASE

I, *Martin Robert Stolar*, born at *Syracuse New York*, *on*
Name City State
April 2, 1943, having filed an application for admission to
Date
the bar of Ohio, consent to have an investigation made as to my moral character, professional reputation and fitness for the practice of law and such information as may be received reported to the admitting authority. I agree to give any further information which may be required in reference to my past record.

I also authorize and request, every person, firm, company, corporation, governmental agency, court, association or institution having control of any documents, records and other information pertaining to me, to furnish to the Supreme Court of Ohio any such information, including documents, records, bar association files regarding charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent data, and to permit the Supreme Court of Ohio or any of its agents or representatives to inspect and make copies of such documents, records, and other information.

I specifically authorize the Supreme Court to obtain any information from my official record on file with Local Board Number *75* of the Selective Service System, located in the City of *Rochester*, State of *New York*; and hereby consent

to and authorize the release of such information by the Selective Service System.

I hereby request and authorize the Department of the ..... to furnish to the Supreme Court of
(Army, Navy, Air Force)
Ohio, the record of each period of my service therein, and to furnish the character of service rendered for each period. My serial number was ..... *not applicable*

I hereby release, discharge, exonerate the Supreme Court of Ohio, its agents and repesentatives, the admission agency of the above jurisdiction, its agents and representatives, and any person so furnishing information from any and all liability of every nature and kind arising out of the furnishing or inspection of such documents, records, and other information or the investigation made by the Supreme Court of Ohio.

I have read the foregoing document and have answered all questions fully and frankly. The answers are complete and true of my own knowledge.

State of *Ohio*
ss.
County of *Franklin*

/s/ Martin Robert Stolar
Signature of Applicant

Subscribed and sworn to before me this *23* day of *Dec.* A.D., 19*68*

/s/ Charles A. Williams
Notary Public

APPENDIX G
APPLICANT'S QUESTIONNAIRE FOR BAR EXAMINATION

Before the Supreme Court of Ohio

In the Matter of the Application of

Martin Robert Stolar

For Admission to the Bar Examination

EXPLANATION AND INSTRUCTIONS

This questionnaire when answered, together with the questionnaire which you answered for registration as a law student, will provide the Supreme Court of Ohio and its Committees on Admission to the Practice of Law with information to determine your qualifications for taking the bar examination. The information obtained may be used as a guide to further investigation. Answer all questions fully, truthfully and accurately.

Two completed typewritten copies of this questionnaire are to be submitted to the Clerk of the Supreme Court at least 90 days prior to the date of examination. Only those applications submitted with the affidavit at the end of the questionnaire will be considered.

1. Your full name *Martin* (First) *Robert* (Middle) *Stolar* (Last)
   (a) Date of birth *April 2, 1943*
   (b) Present home address *18 College Complex Cir. Rochester, N.Y.*
   (c) Present residence address *Apt. 1409 999 Caldwell Pl. Columbus, Ohio*
   (d) Home phone *253-7058* Office phone *221-6581*
2. Have you been naturalized since registering as a law student? *No*
   (a) Date.....Court.....
   Forward naturalization certificate to the Clerk of the

Supreme Court for inspection. It will be returned promptly.

3. Law school which you are attending *New York University School of Law*
   (a) Other previously attended *none*
   (b) Degree awarded or to be received *J.D. Degree received June, 1968*

4. Were you ever dropped, suspended or expelled from any law school? *No*
   (a) If so, explain fully:.....

5. Employment since registering as a law student:
   Employment record on registration form is complete and up to date

Employer	Address

6. Since registering as a law student have you ever been a party to or otherwise involved in any legal proceeding, civil or criminal? *No*
   (a) If so, explain fully:.....

7. List the names and addresses of all clubs, societies or organizations of which you are or have been a member since registering as a law student.
   I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution.

8. References: List three citizens of the community in which you have resided for the past five years and one member of the faculty of the law school or schools which you have attended to whom inquiry may be made concerning your character and fitness for admission to the practice of law in Ohio.

Name	Address
Veronika Kraft	*140 W. 57th Street New York, N.Y.*
Robert A. Quigley	*79 Greenwich Avenue New York, N.Y.*
Harris H. Rusitzky	*1577 Monroe Avenue Rochester, N.Y.*
Prof. Homer Kripke	*NYU Law School 40 Washington Sq. New York, N.Y.*

Martin Robert Stolar
Applicant

STATE OF OHIO)
)SS.
COUNTY OF *FRANKLIN*)

Martin Robert Stolar, being duly sworn, states that he is the applicant named in the above questionnaire and says: I have read the foregoing questions and, to my own knowledge, have answered them fully, correctly and truthfully.

/s/ MARTIN ROBERT STOLAR
Applicant

Sworn to before me and subscribed in my presence this *23* day of *December*, 1968.

/s/ CHARLES A. WILLIAMS
Notary Public
Franklin County, Ohio

My commission expires 6-25-72.

APPENDIX H
REPORT OF COMMITTEE ON APPLICANTS FOR ADMISSION TO THE PRACTICE OF LAW
Before the Supreme Court of Ohio
In the Matter of the Application for Registration of
Martin Robert Stolar
As a Candidate for Admission to the Practice of Law

1. How long have you been a member of the local Bar Association? *six years*
2. Do you know the applicant personally? *no* If so, for how long?
3. Are you personally acquainted with the character references given by the applicant? *no*
   If so, what is their reputation in the community?
4. Has your inquiry revealed any questionable conduct which would adversely affect consideration of this application? *see attached statement* If so, what was the nature of such conduct?
5. In your opinion does this applicant possess the high standards of character required for admission to the practice of law? *see attached statement* If your answer is negative, explain in detail.
6. What is your recommendation relative to the applicant's registration as a candidate for admission to the practice of law? *I recommend that he not be registered at this time based on the fact that a complete investigation cannot be made at this time. See reasons set forth in the attached statement.*

Date *January 23, 1969*
Address *37 West Broad St., Columbus*
/s/ J. Richard Lumpe

NOTE: The Court's Rule on Admission to the Practice of Law requires that two members of the local Committee interview each applicant.

On January 23, 1969, the undersigned interviewed the applicant pursuant to the Rules of the Supreme Court of Ohio for applications for the practice of law. Richard Snodgrass, Attorney at Law, a member of the Admissions Committee, was also present for the interview.

It was noted that Mr. Stolar had refused to answer questions 12g and 13 on the Applicant's Questionnaire and question 7 on the Applicant's Questionnaire for Bar Examination for the following stated reason, "I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution."

Mr. Snodgrass and myself advised Mr. Stolar of the consequences of his refusal to answer these questions. After receiving this advice and stating he understood the matter, Mr. Stolar still refused to answer the above listed questions. His reason for refusing to answer was based on the premise that the questions were not pertinent to his moral and character fitness as an applicant. His principles and personal convictions would not allow him to answer these questions.

Based on my investigation, I find Mr. Stolar to be a very learned person and a very pleasant person, but I cannot recommend him for admission due to the fact he places himself above the rules of the Court and feels that he cannot abide by them when they run afoul of his personal convictions. I also cannot recommend him for admission since I was unable to fully complete the necessary investigation into his moral and character fitness due to his refusal to allow a complete investigation to be made.

/s/ J. Richard Limpe
37 West Broad Street
Columbus, Ohio
221-6755

REPORT OF COMMITTEE ON APPLICANTS FOR ADMISSION TO THE PRACTICE OF LAW

Before the Supreme Court of Ohio

In the Matter of the Application for Registration of Martin Robert Stolar

As a Candidate for Admission to the Practice of Law

1. How long have you been a member of the local Bar Association? *Almost 2 years*
2. Do you know the applicant personally? *No* If so, for how long?
3. Are you personally acquainted with the character references given by the applicant? *No*
   If so, what is their reputation in the community?
4. Has your inquiry revealed any questionable conduct which would adversely affect consideration of this application? *See attached statement.* If so, what was the nature of such conduct?
5. In your opinion does this applicant possess the high standards of character required for admission to the practice of law? *Yes* If your answer is negative, explain in detail
6. What is your recommendation relative to the applicant's registration as a candidate for admission to the practice of law? *See attached statement.*

Date *January 27, 1969*

Address *37 W. Broad St., Columbus, Ohio*

/s/ RICHARD SNODGRASS

NOTE: The Court's Rule on Admission to the Practice of Law requires that two members of the local Committee interview each applicant.

J. Richard Lumpe and I interviewed Mr. Stolar on Thursday, January 23, 1969.

I found Mr. Stolar to be honest and forthright. His statements evidenced also a certain commitment to principle for its own sake, an unusually great amount of social awareness, and a degree of self-interest not reprehensible. On the

basis of the interview and the background actually revealed in Mr. Stolar's applications I have no reluctance to recommend Mr. Stolar for admission to the practice of law.

My recommendation is qualified, however, in that I can recommend him only if the Committee as a whole is willing to recommend his admission despite his refusal, with full notice of the possible consequences, to answer questions on the applications touching on his present and former organizational membership.

Two questions on each application Mr. Stolar, relying on the Fifth Amendment, refused to answer, on the ground that such questions go to matters not properly within the subject matter of such an inquiry. He rejected the argument that the Court, an agency of the state and of which he is to be a servant, has a right to inquire into such matters and to receive his full cooperation in doing so. He did state in response to direct questions that he is not now and has never been a member of the Communist Party, of any socialist party, or of the Students for a Democratic Society, and stated that he has signed the standard U.S. Army pre-induction security oath, which has reference to the "Attorney General's List".

Mr. Stolar was fully advised of the possible consequences of refusing to answer within the context of the *Schwere* and *Konigsberg* cases and the possible position of the Committee and of the Ohio Supreme Court that admission would and could lawfully be denied because of his refusal to answer and cooperate in the investigation. The issue then would seem to be whether the Committee and the Court are willing to honor Mr. Stolar's claimed rights above their own.

/s/ Richard Snodgrass
37 West Broad Street
Columbus, Ohio
228-1511

APPENDIX I
LETTER FROM CHAIRMAN TO PETITIONER

February 7, 1969

Mr. Martin Robert Stolar
999 Caldwell Place
Apartment 1409
Columbus, Ohio

Dear Mr. Stolar:

The Admissions Committee of the Columbus Bar Association has considered your application for admission to the Ohio Bar examination. The committee has voted to deny your application unless by February 21, 1969, you answer questions 12 (g) and 13 of applicant's questionnaire for registration as a law student and question 7 of applicant's questionnaire for admission to bar examination.

Upon receipt of the answers to these questions the investigating committee will further consider your application.

Very truly yours,

WILLIAM H. SCHNEIDER
Chairman
Admissions to the Bar Committee

WHS:lml
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APPENDIX J

LETTER FROM PETITIONER TO CHAIRMAN OF ADMISSIONS COMMITTEE

999 Caldwell Place
Apartment 1409
Columbus, O. 43203
February 10, 1969

William H. Schneider, Esq.
Columbus Bar Association
Committee on Admissions
40 South Third Street
Columbus, Ohio 43215

Dear Mr. Schneider:

I am in receipt of your letter of February 7, advising me of your Committee's denial of my application. Please be informed that I will not change my answers to questions 12 (g), 13 and 7 of the two application forms. This will be my position on February 21, 1969 also.

It is my belief that such questions are not within the proper scope of review for a Bar Association Committee on Admissions and in any event, the answers to such questions are protected by the First and Fifth Amendments of the United States Constitution.

I urge your committee to reconsider its decision. In the event that they do not, or do reconsider and reach the same conclusion, I would appreciate your informing me as soon as possible. In any event, I would like to know if I am entitled to a hearing before the Supreme Court and, if so, I request such a hearing with counsel.

I would appreciate your acting and responding with dis
patch in this matter since the examination is but a shor
time away.

Very truly yours,
/s/ Martin R. Stolar

MRS/s

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APPENDIX K
LETTER FROM CHAIRMAN TO CLERK

February 18, 1969

Thomas Startzman, Esq.
Clerk of Supreme Court
State House Annex
Columbus, Ohio 43215

Re: Martin Robert Stolar

Dear Mr. Startzman:

The Admissions Committee of the Columbus Bar Association has considered the application of Martin Robert Stolar, 999 Caldwell Place, Apt. 1409, Columbus, Ohio, for admission to the Ohio bar examination. As indicated thereon Mr. Stolar has refused to answer questions 12(g) and 13 of applicant's questionnaire for registration as a law student and question 7 of applicant's questionnaire for admission to the bar examination.

The Admissions Committee voted to recommend to the Supreme Court that Mr. Stolar's application be denied unless Mr. Stolar answered the indicated questions. This information was transmitted to Mr. Stolar by certified mail and Mr. Stolar has indicated to the undersigned both by telephone and by letter that he will not answer the indicated questions. A copy of his letter is attached hereto. He further indicates that he did not wish the committee to wait until February 21, 1969, to forward this matter to you.

In view of Mr. Stolar's refusal to answer the questions above referred to, the Admissions Committee of the Colum-

bus Bar Association recommends that Mr. Stolar's application for admission to the Ohio Bar examination be denied.

Very truly yours,

/s/ William H. Schneider
Chairman
Admissions to the Bar Committee

WHS:lml

Enclosure:
(1) copy of letter
cc: Martin Robert Stolar

OCT 1 1969

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1969

No. ~~79~~ 18

In the Matter of the Application of
MARTIN ROBERT STOLAR
for Admission to the March, 1969,
Ohio Bar Examination

PETITIONER'S REPLY BRIEF

Leonard B. Boudin
Rabinowitz, Boudin & Standard
30 East 42nd Street
New York, New York 10017

William Boyland
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Columbus, Ohio

Attorneys for the Petitioner

David Rosenberg,
of Counsel.

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 75

In the Matter of the Application of
MARTIN ROBERT STOLAR
for Admission to the March, 1969,
Ohio Bar Examination

PETITIONER'S REPLY BRIEF

1. Preliminarily, it should be noted that while this case is similar to *Baird* v. *State Bar of Arizona*, *cert. granted* 394 U.S. 957, No. 53, the invasion of the applicant's First Amendment rights in Ohio is of broader dimensions. Petitioner, like the applicant in *Baird*, challenges the power of state bar authorities to compel disclosure of his association with "any organization which advocates" forceful overthrow of government. But additionally, petitioner contests the constitutionality of two other searching and indiscriminate, and in their breadth, far more unlimited interrogatories which require disclosure of *all* past and present associations.

2. Respondents attempt to justify their practice, principally, by arguing that Ohio's interest in regulating admission to its Bar answers all First Amendment questions regarding its sweeping associational inquiry.

This argument is contrary to a long line of decisions in this Court prohibiting the effectuation even of legitimate governmental purposes, including regulation of the Bar, "by means that broadly stifle fundamental personal liberties." *Shelton* v.

Tucker, 364 U.S. 479, 488. "For a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." *NAACP* v. *Button*, 371 U.S. 415, 439; *Mine Workers* v. *Illinois Bar Assn.*, 389 U.S. 217, 222. See also *United States* v. *O'Brien*, 391 U.S. 367, 381; *United States* v. *Robel*, 389 U.S. 258, 265-268; *Schneider* v. *New Jersey*, 308 U.S. 147, 161.

Thus, "an unlimited and indiscriminate search" of an individual's associational past, such as respondents claim they are entitled to conduct in this case, has been ruled unconstitutionally overbroad by this Court in cases closely analogous to the present one. See *Shelton* v. *Tucker, supra; Schneider* v. *Smith*, 390 U.S. 17, 24 and at 27 (Mr. Justice Fortas concurring).

Moreover, Ohio's interest in regulating its Bar does not solve the First Amendment problems raised by the other aspects of imprecision in its admission process.

For example, respondents admit that an affirmative answer to question 12(g)[1] or an unorthodox association disclosed in answer to questions 7 and 13[2] is employed as the triggering device for prolonged investigation, unlimited political interrogation

---

1. Question 12(g) reads in pertinent part:

"State whether you have been or presently are: A member of any organization which advocates the overthrow of the government of the United States by force.

"If the answer to any section of the above question is 'yes', set forth the facts in detail . . ."

2. Question 7 provides: "List the names and addresses of all clubs, societies or organizations of which you are or have been a member since registering as a law student."

Question 13 provides: "List the names and addresses of all clubs, societies or organizations of which you are or have been a member."

and extensive delay in final determination of the applicant's qualifications. (Res. Br. p. 13.) As petitioner has pointed out (Pet. p. 12), this practice of respondents penalizes an applicant's exercise of his First Amendment right of association. Guilty association is presumed from the mere disclosure of membership. As a result, the applicant is forced into a position of having to rebut this wholly arbitrary presumption; in effect he must prove the lawfulness of his association, and in essence his beliefs. This he must do by submitting to respondents' probing interrogation instituted in Question 12(g) and carried forward in personal interviews. As a result, the applicant is compelled to disclose, explain and justify to respondents' satisfaction, every aspect of his association and beliefs. This practice is directly contrary to the rulings in *Speiser* v. *Randall*, 357 U.S. 513; *Dombrowski* v. *Pfister*, 380 U.S. 479, 494-496; *Robel* v. *United States*, 389 U.S. 258, 266 and n. 16; *Elfbrandt* v. *Russell*, 384 U.S. 11, 19; *United States* v. *Brown*, 381 U.S. 437; *Schneiderman* v. *United States*, *supra* at 136; see also *Haskett* v. *Washington*, 294 F. Supp. 912, 915, 916-917 (Wright, J., concurring).[3]

This practice is also unconstitutionally overbroad because the presumption of unlawful membership is, as in *Keyishian* v. *Board of Regents*, 385 U.S. 589, 608-609, irrebuttable. The goal of respondents' "investigation" is "to determine whether petitioner did, at the time of such membership, also espouse such illegal aims [of the organization] or whether he now espouses such illegal aims" (Res. Br. p. 13). It is clear that respondents' test for unlawful association is met by mere advocacy. Proof that the applicant's "espous[al]" was neither

3. In addition to creating an arbitrary presumption of guilty association and casting the burden of proving lawful association on the applicant, Question 12(g) suffers in other respects from unconstitutional overbreadth and vagueness, which are fully delineated in the Petition at pp. 10-14.

directed toward "inciting or producing imminent lawless action" (*Brandenberg* v. *Ohio*, 395 U.S. 444, 447-448) nor specifically intended to further the organization's unlawful aims by resort to criminal conduct. *Scales* v. *United States*, 367 U.S. 203, 229; *Yates* v. *United States*, 354 U.S. 298; 330 n. 36, 331 is irrelevant under respondents' scheme of things.

3. Respondents state repeatedly that petitioner's refusal to answer their broad-ranging questions *obstructed* their investigation of his character (Res. Br. p. 11, 12-14). But neither the committee nor the court below made findings of fact, as they are constitutionally required, to support their bald conclusion of obstruction. See *Wood* v. *Georgia*, 370 U.S. 375, 386-387; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 239.

Nor did respondents make any effort before this Court to explain with some degree of particularity how petitioner obstructed the investigation. Indeed, respondents' case of obstruction is nothing more than conjecture: "the requested information *may* provide a valuable insight [Res. Br. p. 12] . . . the answers *might* show little need to proceed further [*ibid*] . . . knowledge of such organizations and associations *might* well direct the committee's attention to persons familiar to them who have known the applicant [*id.* at 13]" (emphasis supplied). The purely roving nature of this inquiry is made even more pernicious by respondents' position that "*if* the list of associations and clubs raises no question concerning petitioner's meeting the minimum standards, this also assists the committee in making its determination" (Res. Br. p. 13). This attempt to determine an applicant's political beliefs by a process of exclusion is thoroughly unreasonable. The committee is left to act, without standards or procedural restrictions, to reward applicants whose political orthodoxy conforms to the

committee's and to penalize nonconforming applicants with extended political investigation.

Finally, this case is wholly unlike *Konigsberg* v. *State Bar*, 366 U.S. 36. There are no "gaps" to fill here, and the record concerning the applicant's political fitness is not in a state of "uncertainty." *Id.* at 45, 46. To the contrary, on the basis of this record, respondents' insistence that petitioner answer the three questions is merely *pro forma*. The information sought by these questions was already in respondents' hands *via* the New York questionnaire which contained similar questions and which petitioner had answered. Furthermore, petitioner's refusal could hardly be termed obstruction, since he unhesitatingly answered the committee's questions concerning particular associations. Compare *Konigsberg* v. *State Bar*, *supra* at 39 [applicant refused "to answer *any* questions relating to membership in the Communist Party" (emphasis supplied)].

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Leonard B. Boudin
Rabinowitz, Boudin & Standard
30 East 42nd Street
New York, New York 10017

William Boyland
78 East State Street
Columbus, Ohio

Attorneys for the Petitioner

David Rosenberg,
of Counsel.

September 29, 1969

FILE COPY

NOV 19 1969

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1969

No. ~~75~~ 18

In the Matter of the Application of

MARTIN ROBERT STOLAR,

Petitioner.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF FOR PETITIONER

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RABINOWITZ BOUDIN & STANDARD
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New York, N. Y.

DAVID ROSENBERG
on the Brief

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Law Students Civil Rights Research Council, Inc. v. Wadmond, 68 Civ. 2917, consolidated with Wexler v. The Supreme Court of the State of New York, 299 F. Supp. 117 (S.D.N.Y. 1969)..4, 8, 14, 26, 27, 40
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Brief of the Attorney General of the United States as Plaintiff-Intervenor in *Sobell* v. *Perez*, 288 F. Supp. 392 (E.D. La. 1968) 15

Brown & Fassett, *Loyalty for Admission to the Bar*, 20 U. of Chi. L. Rev. 480 (1953) 14, 20

Chafee, *Blessings of Liberty* (1956) 16

Chafee, *Free Speech in the United States* (1941) 15

Chroust, *The Rise of the Legal Profession* (1965) 20

Conference Working Group, *The Independence of the Bar*, 13 Law. Guild Rev. 158 (1953) .. 15, 20

Countryman, *Loyalty Oaths for Lawyers*, 13 Law. Guild Rev. 149 (1953) 20, 21

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Countryman & Finman, *The Lawyer and Modern Society* (1966) 14, 20, 21

Emerson, Haber & Dorsen, *Political and Civil Rights in the United States* (L. ed. 1967) 14

Garland, Experience in the United States Supreme Court (1898) 21

Ginger & Koenisberg, *Report on Rules for Admission to the Bar: Tests of Applicants' "Loyalty" and "Good Moral Character,"* 18 Law. Guild Rev. 58 (1958) 14

Koenigsberg and Stavis, *Test Oaths: Henry VIII to the American Bar Association,* 11 Law. Guild Rev. 111 (1951) 16, 20

Lewis, A Talk with Warren on Crime, the Court, the Country, N.Y. Times Magazine (19 October 1969) 16

Loyalty Oath for Lawyers, Committee on Law Reform of the Association of the Bar of the City of New York, 103 Reports No. 1017A (1950) 29

McKay, The Preference for Freedom, 34 N.Y.U.L. Rev. 1182 26

New York Times:

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Note, *Less Drastic Means and the First Amendment*, 78 Yale L. J. 464 (1969) 25

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Oppenheim, *International Law* (8th ed. 1955) Vol. I 21

Roberts, *Social Crisis and the Lawyer and the Law Student: An Essential Meeting*, Villanova L. Rev. (Spring 1969) 16

Rosenberg, *Constitutional Limitations on the Process of Admission to the Bar*, 23 N.Y.U. Intra L. Rev. 135 (1968) 20

Symposium, *The Right to Counsel and the "Unpopular Cause"*, 20 U. of Pitt. L. Rev. 727 (1959) .....

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Supreme Court of the United States

October Term, 1969

No. 75

In the Matter of the Application of

MARTIN ROBERT STOLAR,

Petitioner.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF FOR PETITIONER

Opinion Below

The order in the Court below was accompanied by an unreported memorandum (55a-56a).[1] The memorandum approves the recommendation of the Committee on Admissions of the Columbus Bar Association (hereinafter "Committee") which is likewise unreported (26a-30a).

Jurisdiction

The final order of the Supreme Court of Ohio was made and filed on February 27, 1969 (55a-56a). The Petition for Certiorari was filed on March 31, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

[1] The designation "a" refers to pages of the Single Appendix.

Constitutional and Regulatory Provisions Involved

The principal constitutional provisions involved are Articles Three and Six of the United States Constitution and the First, Fourth, Fifth, Sixth and Fourteenth Amendments thereto, and Rule XVII of the Rules of the Supreme Court of Ohio, entitled, "Admission to the Practice of Law" (reprinted *infra*, pp. 51-57).

Questions Presented

Does the compelled disclosure by applicants for admission to the Ohio Bar of their political and personal activities, beliefs and associations

(1) violate through overbreadth and otherwise their freedom of speech and association and their right to privacy under the First and Fourteenth Amendments to the Constitution;

(2) interfere with the right to counsel and freedom of speech and association of a class of litigants who seek redress of their federal rights and the right of attorneys to practice law in the federal courts in violation of Articles Three and Six of the Constitution and the First, Sixth and Fourteenth Amendments;

(3) deny their rights to due process and to freedom from unreasonable search and seizure under the First, Fourth and Fourteenth Amendments where the state's inquiry is made of all applicants and is not based upon probable cause arising from facts peculiar to the individual applicant;

(4) violate their rights to due process and freedom of speech, association and belief by placing upon them the burden of proving lawful membership in an organization which is claimed to be advocating the overthrow of government;

(5) violate the void for vagueness principle of the First and Fourteenth Amendments insofar as it demands the details of membership in organizations which advocate the overthrow of government;

(6) violate the constitutional privilege against self-incrimination where answers are compelled under oath, overriding the applicant's assertion of such privilege?

Statement of the Case

Petitioner is 26 years old, a graduate of New York University Law School in June, 1968, and a member of the New York Bar (19a). At the time the Petition was filed, petitioner was assigned to the Columbus [Ohio] Metropolitan Area Community Action Organization through the VISTA program of the United States Government Office of Economic Opportunity (8a).

On January 3, 1969 petitioner applied for admission to the March, 1969 Ohio Bar Examination by duly filing the necessary application forms and other required certificates, affidavits and fees with the Supreme Court of Ohio (3a).

As part of that application petitioner submitted two personal background questionnaires,[2] made under oath (13a, 16a),[3] constituting the initial stage of an investigation into his "character, reputation and moral qualifications" for admission to the Ohio Bar. The questionnaire for registration contained the following statement as to his "reasons for desiring to be an attorney at law":

> "My main reason for desiring to be an attorney is that the law is an ever-changing field—it con-

[2] These questionnaires are titled: "Questionnaire for Registration" (5a-13a) and "Questionnaire for Admission" (14a-16a).

[3] False statements on the questionnaires are subject to the perjury provisions of Ohio Rev. Code § 2917.25.

> tinually develops and does not remain static or stagnant. Consequently it differs from a great many other fields into which I could have gone as a career. Secondanly, [sic] the law can be an effective tool for molding the social change so necessary today. Working with and within the law to produce such change is, for me, the most important contribution I can make to the society in which I live" (11a).

Petitioner was required to and did consent to have an investigation made as to his "moral character, professional reputation and fitness for the practice of law" (12a), to authorize every person or governmental agency to furnish pertinent information to the court below, and specifically to authorize his Local Draft Board to release Selective Service information to the court (12a, 13a).

The investigation conducted by Ohio resulted in its acquisition of petitioner's application for admission to the Bar of the State of New York which contained a number of questions subsequently either recognized by the New York courts or held by a statutory district court to be unconstitutional. See *Law Students Civil Rights Research Council Inc.* v. *Wadmond*, consolidated with *Wexler* v. *The Supreme Court of the State of New York*, 299 F. Supp. 117 (S.D.N.Y. 1969) *appeal pending*, No. 696, October Term, 1969 (hereinafter "*LSCRRC* v. *Wadmond*").

Petitioner's response to that New York questionnaire disclosed his election as Administrative Director of the New York University Law School Moot Court Board, an award of a resident fellowship by New York University, and his service as a graduate adviser in an undergraduate dormitory (23a). He also referred to his activities as a Boy Scout and his participation in his Temple's religious educational programs (23a). He responded affirmatively to the questions: "Do you believe in the principles underlying the form of Government of the United States?"

(23a), "Can you consciously and do you affirm without any mental reservation that you have been and are loyal to the Government of the United States?" (24a) and whether he would "consciously endeavor to conform [his] professional conduct to the Canons of Ethics." (*Ibid*).

Petitioner gave a negative response to a further question: "State whether you have been or are a member of any party or organization engaged in propagating or pledged to effect changes in the form of government provided for by the United States Constitution, or in advancing the interests of a foreign country? If so, state the facts fully." (23a).

Finally, petitioner stated to the New York admission court his reasons for desiring to practice law:

> "Early in my college years, when I first began to think of a life's work, I sought out the law chiefly because it was not a static field. As I matured I saw that the law not only changed as it developed but it was capable of producing social change.
>
> "In addition, the practice of law would give me a chance to become knowledgable [sic] in many other fields—a kind of Renaissance-man profession, I had, and still have, no desire to channel all my life's work into one specialty and prefer the flexibility which the legal profession offers." (24a).

Petitioner's dispute with Ohio arose when he declined to answer three of the questions in the Ohio questionnaires:

> "12(g): State whether you have been, or presently are . . . a member of any organization which advocates the overthrow of the government of the United States by force. . . . If your answer to any section of the above question is 'Yes' set forth the facts in detail. . . ." (Questionnaire for Registration, 10a).
>
> "13. List the names and addresses of all clubs, societies or organizations of which you are or have been a member." (Questionnaire for Registration, *ibid*).

> "7. List the names and addresses of all clubs, societies or organizations of which you are or have been a member since registering as a law student." (Questionnaire for Admission, 15a).

Petitioner responded to each of these questions:

> I will not answer this question under my right as guaranteed by the Fifth Amendment of the United States Constitution.

Subsequently, petitioner appeared for a personal interview before two members of the Committee who inquired as to why he had refused to answer the questions (27a, 29a). He stated that his refusal was based upon his Fifth Amendment privilege and upon the ground that the "questions were not pertinent to his moral and character fitness as an applicant" (27a). Petitioner was informed as to the possible consequences of his refusal. (27a, 29a). The interviewers, however, continued their oral interrogation of the petitioner, which finally resulted in his statement:

> "that he is not now and has never been a member of the Communist Party, or any socialist party, or of the Students for a Democratic Society and . . . that he has signed the standard U.S. Army pre-induction security oath, which has reference to the 'Attorney General's List' " (29a).

Both members of the Committee reported that they were very favorably impressed by the petitioner. Mr. J. Richard Lumpe found the petitioner "to be a very learned person and a very pleasant person" (27a). His colleague, Mr. Richard Snodgrass, concluded that "this applicant possess[es] the high standards of character required for admission to the practice of law" (28a) and that he "found Mr. Stolar to be honest and forthright." He added:

> "His statements evidenced also a certain commitment to principle for its own sake, an unusually great amount of social awareness, and a degree of self-

> interest not reprehensible. On the basis of the interview and the background actually revealed in Mr. Stolar's applications I have no reluctance to recommend Mr. Stolar for admission to the practice of law."

However, he said:

> "My recommendation is qualified, however, in that I can recommend him only if the Committee as a whole is willing to recommend his admission despite his refusal, with full notice of the possible consequences, to answer questions on the applications touching on his present and former organizational membership. (29a)."

Mr. Lumpe's conclusion was less equivocal:

> "Based on my investigation, I find Mr. Stolar to be a very learned person and very pleasant person, but I cannot recommend him for admission due to the fact he places himself above the rules of the Court and feels that he cannot abide by them when they run afoul of his personal convictions. I also cannot recommend him for admission since I was unable to fully complete the necessary investigation into his moral and character fitness due to his refusal to allow a complete investigation to be made." (27a.)

After a full Committee meeting which considered these recommendations, the Chairman notified petitioner that the Committee had "voted to deny your application unless by February 21, 1969" he answered the three questions involved. (30a).

Petitioner replied in a letter dated February 10, 1969 that, "[i]t is my belief that such questions are not within the proper scope of review for a Bar Association Committee on Admissions and in any event, the answers to such questions are protected by the First and Fifth Amendments of the United States Constitution." (31a).

The Chairman of the Admissions Committee reported to the Court below that "[i]n view of Mr. Stolar's refusal

to answer the questions above referred to, the Admissions Committee of the Columbus Bar Association recommends that Mr. Stolar's application for admission to the Ohio Bar Examination be denied". (33a-34a).

Counsel for petitioner first entered the case while the court below was considering the Committee's recommendation by informing the court below of the then recent decision in *LSCRRC* v. *Wadmond*, *supra*, which appeared to be in conflict with the Committee's recommendation. In that case, the statutory court, per Circuit Judge Friendly, held that questions to applicants for the New York Bar, *similar to the questions petitioner refused to answer*, were impermissible under the First Amendment. Petitioner's counsel also supported petitioner's First and Fifth Amendment grounds by citing this Court's decision in *Spevack* v. *Klein*, 385 U.S. 511, District Judge Motley's concurring-dissenting opinion in *LSCRRC* v. *Wadmond, supra* and a statutory district court decision in *Haskett* v. *Washington,* 294 F. Supp. 912 (D.D.C. 1968) (40a-52a).

On February 27, 1969, the court below decided without opinion that "the recommendation of the Committee on Admissions should be approved" (55a).

Summary of Argument

A. This case presents a broad challenge to the constitutionality of political screening and interrogation in the areas of public employment, licensing and benefits. The Court in recent years has curtailed many of the dangerous aspects of such political regulation—aspects which are present in each of the three questions put by Ohio to the petitioner which gave rise to the present controversy.

This case, however, going beyond these specific questions, raises the question of whether any of these loyalty-

security programs are consistent with the First and Fourteenth Amendments. It is appropriate that this broad issue be raised in a case involving admission to the bar because of the larger interests at stake than the liberties and privacy of the individual applicant. Political tests for lawyers necessarily have a chilling effect upon their political activities prior to application for membership in the bar. It also limits the availability of legal assistance by lawyers sympathetic to minority and dissident groups.

B. Professional competence aside, the only criterion for admission to the bar consistent with the First and Fourteenth Amendments is "good moral character." That criterion is inapplicable to political activities—even if they were to involve the commission of crime—for such political activities are not evidence of moral turpitude.

There is no evidence that lawyers of a particular political coloration—even members of an organization advocating the overthrow of the Government by force— have been derelict in their professional obligations or are likely to be so. No disciplinary proceedings have produced evidence of a relationship between political activities and moral turpitude.

The burden is on Ohio to establish the contrary. Accordingly, even if it were to rewrite its Bar admission standards to meet tests previously imposed by this Court it would violate the basic principle that no political associations, activities or statements may consistently with the Fourteenth Amendment obstruct admission to the Bar.

C. Should the Court take a more limited approach to the problem, Ohio's sweeping inquiry must be held improper under this Court's rule of precision in First Amendment cases. This rule of precision is necessary to safeguard the "breathing space" essential to the survival of First Amendment rights of free speech and association. Ohio has failed to adhere to this rule of precision in several major respects:

1. Assuming, *arguendo,* Ohio's proper interest in preventing "politically unfit" citizens from practicing law, the destructive effect on personal and public interests, summarized above, requires that it choose a less restrictive alternative than its present program. For that program is bound to deter attorneys and prospective attorneys from engaging in political activities which may delay, if not prevent, their admission to the Bar—a classic case of prior restraint.

The interest which Ohio asserts is that of safeguarding clients and the courts from unethical behavior by lawyers who "espouse illegal aims." Quite aside from the remoteness of this speculative "danger," Ohio has the "less restrictive alternative" available, namely, criminal or disciplinary sanctions in the event that its fears should be realized in a particular case.

2. Respondents have not indicated any statute or regulation of Ohio which establishes a political test for admission to the Bar. Nor was petitioner informed, prior to the determination of the court below denying admission, of the existence or nature of such a political test. Thus, although petitioner was repeatedly advised by members of the Committee that his refusal to answer obstructed their investigation, he was never advised of any purpose to be served by the associational interrogatories, particularly question 12(g) (*supra,* pp. 5-6).

Ohio's political test for admission was first revealed in respondents' Brief in Opposition to the Petition at p. 13. There, respondents stated that Ohio's objective was to determine whether an applicant "espouses" an organization's "illegal aims" at the times of his membership or of his application to the Bar. Substantial questions immediately arise regarding the vagueness which inheres in the terms "espouse" and "illegal aims" and the concept of "membership."

Ohio's program also fails to observe the distinction between mere advocacy and "advocacy directed to inciting

or producing imminent lawless action and . . . likely to incite or produce such action," *Brandenberg* v. *Ohio,* 395 U.S. 444, 447; thus, it both deters and proscribes speech which is constitutionally protected. Equally defective with respect to the right of association, it does not require that there be "specific intent" to further an organization's aim of violent overthrow by resort to unlawful conduct or advocacy. *Keyishian* v. *Board of Regents,* 395 U.S. 589, 608.

3. The investigational apparatus employed by Ohio violates the rule of precision by permitting a broad political inquiry without probable cause and without other sensitive procedural tools.

The First and Fourth Amendments require a factual basis for a search, particularly one of this breadth. That issue was not determined by this Court in the earlier Bar cases which involved both narrower questions and some foundation. In analogous situations in the First Amendment area, this Court has required a factual foundation. That rule is even more appropriate here where the respondents possess an adjudictory as well as an investigatory power. Proof of probable cause has been required in situations involving far more compelling and immediate state interests. Since admission to the Bar does not involve comparable damage to the state, a similar foundation is a constitutional pre-requisite.

4. The particular questions put to petitioner as to every organizational connection are improper under the decisions of this Court, since they constitute a type of "unlimited or indiscriminate search" condemned in *Shelton* v. *Tucker,* 364 U.S. 479.

The questions concerning membership in organizations advocating the overthrow of the government by force and violence have the defects noted above, *i.e.,* the absence of knowledge and the absence of congruence of knowledge

and membership. Further, they treat as irrelevant such constitutional requirements as specific intent, incitement and likelihood of danger. The disclosure of mere knowing membership creates a presumption of illegal membership, imposing upon the applicant the burden of rebuttal by a thorough review of his entire political background. Such a presumption is irrational, contrary to the rule that guilt is personal and compels one to "steer far wider of the unlawful zone than if the state must bear these burdens." *Speiser* v. *Randall*, 357 U.S. 516, 526.

Indeed the presumption of unlawful membership arising from an affirmative answer to question 12g may be irrebutable like the similar presumption considered in *Keyishian* v. *Board of Regents, supra,* at 608. For under Ohio's program one cannot rebut the presumption even by proving lack of such elements as knowledge of the organization's purposes, specific intent or actual incitement.

Finally, the presumption denies due process because respondents' determination that an organization advocates violent overthrow is not the product of a review of the organization's history or purposes under the procedural safeguards demanded by *Anti-Fascist Committee* v. *McGrath,* 341 U.S. 123.

D. The infringement of the First Amendment rights of applicants to the Bar by Ohio's program is the inevitable consequence of its having undertaken to enforce a political test. Such a task is a subjective one; it is normally limited to contemporary community standards and it bears no relationship to the traditional concern of the Bar for applicants of good moral character.

E. The respondents' suggestion that petitioner *obstructed* their investigation does not have the necessary constitutional support of a judicial finding of fact. Such a finding could not have been made in view of petitioner's

response to specific questions, the absence of any evidence against him, and respondents' possession of his New York questionnaire. Respondents' speculation as to the importance of its sweeping investigation only establishes their unreasonable intrusion into a protected area.

II. Petitioner had an independent ground for his refusal to answer these sweeping political questions: his privilege against self-incrimination.

The privilege, of course, must be liberally construed in the light of its history and purposes. While it has been applied to public employees, this Court has expressed special concern for members of the Bar who do not have the duty of accountability to an employer. Similar considerations require that applicants for admission enjoy the same protection that is particularly appropriate in response to the kind of sweeping political inquiry which gave rise to the privilege.

POINT I

ADMISSION TO THE OHIO BAR MAY NOT, UNDER THE FIRST AND FOURTEENTH AMENDMENTS, BE CONDITIONED UPON PETITIONER'S SURRENDER OF HIS ASSOCIATIONAL PRIVACY.

A. Introduction

Ohio has refused to admit petitioner to its Bar unless he surrenders the privacy of his political beliefs, associations and speech, by answering the broad associational interrogatories set forth in the admission questionnaires. These interrogatories are an integral part of the political screening program which Ohio, like every other state and

some federal jurisdictions, has instituted to regulate the political fitness of applicants to the Bar.[4]

Petitioner's challenge, based on the First and Fourteenth Amendments, calls into question the constitutional propriety of political screening programs in the sensitive area of bar admissions and of the investigational apparatus by which these programs are implemented. In recent years this Court has curtailed many of the dangerous aspects of political regulation in areas other than Bar admission which are still present in the Ohio program under review.[5] The instant case, of course, establishes that Ohio's program is irreconcilable with the recent decisions of the Court. It also poses the question of whether any political screening and interrogation in the area of public employment, licensing and benefits is consistent with the requirements of the First Amendment.

Taking note of the tradition in this Court, beginning with *Ex parte Garland*, 71 U.S. (4 Wall.) 333, it is appropriate that a major test of the power of the state to insti-

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[4] The political screening program involved in this case closely resembles the program under review in *Baird* v. *State Bar of Arizona, cert. granted* 394 U.S. 957 and presented by *LSCRRC* v. *Wadmond, supra.*

See generally, Brown & Fassett, *Loyalty Tests for Admission to the Bar*, 20 U. of Chi. L. Rev. 480 (1953); Countryman & Finman, *The Lawyer and Modern Society*, 758, 822-884 (1966); Ginger & Koenigsberg, *Report on Rules for Admission to the Bar; Tests of Applicants' "Loyalty" and "Good Moral Character"*, 18 Law. Guild Rev. 38 (1958); 1 Emerson, Haber & Dorsen, *Political and Civil Rights in the United States*, 262-283 (L.ed. 1967); Note, *Inquiries Into the Political Beliefs and Activities of Applicants for Admission to the Bar*, 1 Columbia Survey of Human Rights 33 (1967-1968).

[5] See e.g. *Schneider* v. *Smith*, 390 U.S. 17; *United States* v. *Robel*, 389 U.S. 258; *Keyishian* v. *Board of Regents*, 385 U.S. 589; *Elfbrandt* v. *Russell*, 384 U.S. 11; *Aptheker* v. *Secretary of State*, 378 U.S. 500.

tute political screening programs should arise in the context of a Bar admission case. For this Court has long recognized that, because more is at stake than the liberties and privacy of individuals, the Bar is a particularly unsuitable area in which to experiment with First Amendment freedoms.[6]

Political controls on the Bar, as exemplified by Ohio's screening program, directly threaten an interest of overriding importance to our society—the independence of the Bar.[7] The threat of sanctions for political unorthodoxy, combined with the unlimited and indiscriminate power of inquiry into an individual's political privacy has the undeniable effect of inhibiting members (including petitioner) and prospective members of the Bar from association with or representation of unpopular groups or causes.[8]

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[6] See *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 247 (Mr. Justice Frankfurter concurring); *Konigsberg* v. *State Bar*, 353 U.S. 252, 273; *NAACP* v. *Button*, 371 U.S. 415.

[7] See *NAACP* v. *Button*, *supra*; *In re Sawyer*, 360 U.S. 622; *Sanders* v. *Russell*, 401 F.2d 241 (5th Cir. 1968); *Lefton* v. *City of Hattiesburg*, 333 F.2d 280, 285, 286-287 (5th Cir. 1964); *Sobell* v. *Perez*, 289 F. Supp. 392, 399 (E.D. La. 1968).

[8] See *NAACP* v. *Button*, *supra* at 430-438, 443-445; *Hackin* v. *Arizonia*, 389 U.S. 143, 146 *appeal dismissed* (Mr. Justice Douglas dissenting); *Konigsberg* v. *State Bar*, 366 U.S. 36, 73-74 and *In re Anastaplo*, 36 U.S. 82, 115-116 (Mr. Justice Black with whom Chief Justice Warren and Mr. Justice Douglas concur, dissenting); cf. *Shelton* v. *Tucker*, 364 U.S. 479, 486-487; see also Chafee, *Free Speech in the United States* 4 (1941); Brief of the Attorney General of the United States as Plaintiff-Intervenor in *Sobell* v. *Perez*, *supra*; Conference Working Group, *The Independence of the Bar*, 13 Law, Guild. Rev. 158 (1953).

The role played by law students in civil rights and civil liberties litigation, as research assistants or as counsel under special programs allowing third-year law students to represent indigents in civil and criminal actions, should be emphasized in calculating the impact of the Ohio program on the availability of legal assistance in these areas. Because of a shortage of lawyers, adequate assistance

The spectre of the nearly successful attempt to purge communists, socialists, and in general, the politically unpopular from the Bar during the McCarthy period is too corporeal to allow this Court to ignore the dangers which inhere in the present example of political regulation. The warning announced in the celebrated report on *Loyalty Oaths for Lawyers* issued by the Committee on Law Reform of the Association of the Bar of the City of New York is of equal moment today as it was on the day it was delivered:

> "The establishment of the oath requirement might lessen the freedom of the Bar to accept the responsibility of representing unpopular causes. At this time, when Communists are being more frequently called upon to appear in courts, it is essential that they should not be deprived of their conceded right to be represented by counsel of their own choice. A lawyer might hesitate to represent accused Communists lest it be said that such representation constituted support of an organization of the prohibited kind." *The Proposed Anti-Communist Oath: Opposition Expressed*, 37 A.B.A.J. 123, 125 (1951).[9]

There are even broader consequences. Not only does limitation on the availability of legal assistance by sympathetic, if not like-minded attorneys or prospective attorneys, critically affect the ability of minority and dissident groups to obtain vindication of federal rights in the courts, but in a special sense these groups are also denied their

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[8] (cont.) of counsel for poor persons, prisoners or the racially or politically oppressed, has come to depend directly on the services of law students. See generally *Johnson* v. *Avery*, 393 U.S. 483, 489 and n. 9, and 491 (Mr. Justice Douglas concurring); *Hackin* v. *Arizona*, *supra*; Roberts, *Social Crisis and the Lawyer and Law Student: An Essential Meeting*, Villanova L. Rev. (Spring 1969); Lewis, "A Talk With Warren On Crime, the Court, the Country," *N.Y. Times Magazine*, pp. 34, 131-133 (Oct. 19, 1969).

[9] See generally Koenigsberg and Stavis, *Test Oaths: Henry VIII to the American Bar Association*, 11 Law. Guild Rev. 111 (1951); Chafee, *Blessings of Liberty*, 157-176 (1956).

rights to freedom of speech and association. As this Court has recognized, litigation provides the poor, segregated and politically unpopular with an available and inexpensive mode of expressing their social and political beliefs. See *NAACP* v. *Button, supra* at 428-429, 431, 444-445; *Mine Workers* v. *Illinois State Bar Ass'n.*, 389 U.S. 217; *United States* v. *Robel, supra* at 283 n. 1 (Mr. Justice White dissenting); *Railroad Trainmen* v. *Virginia Bar*, 377 U.S. 1; Syposium, *The Right to Counsel and the "Unpopular Cause"*, 20 U. of Pitt. L. Rev. 727 (1959). This method of expression has been increasingly important and, in some circumstances, indispensable to many political movements which sometimes view the judiciary as the only responsive institution and meaningful forum where questions of social and political justice are concerned. Views along these lines are suggested in petitioner's answer given on the questionnaire as to his reasons for desiring to become an attorney.

Finally, the fact that petitioner is already admitted to practice in New York magnifies the serious public and private consequences of political controls on the Bar, such as those instituted by Ohio. The power to screen the political fitness of out-of-state attorneys, exercised by Ohio in this case, increases the limitations on the ability of minority or dissident groups to obtain counsel, since frequently community prejudice forces these groups to depend exclusively on the out-of-state attorney for legal assistance. See *supra*, p. 15, ftn. 7.

B. Under the First Amendment, No Political Test May be Imposed for Admission to the Bar

While, in the light of the constitutional infirmities next to be discussed, this case does not *compel* a decision upon the point, the increasingly critical importance of the First Amendment, the independence of the Bar, and the representation of minority groups (*supra*, pp. 15-17) justify a broad ruling by this Court that no political test whatso-

ever—even knowing membership in an organization with the specific intent to advance its illegal purposes—may constitutionally be imposed upon applicants for admission to the Bar.

We recognize that this broad statement runs counter to the implications, at least, in the majority opinions of this Court in *Konigsberg* v. *State Bar, supra,* and *In re Anastaplo, supra.* Factually, those cases may be distinguished on the ground that they involved questions concerning the Communist Party which has been treated as *sui generis* by this Court in the light of Congressional and judicial findings.[10] Nevertheless, we urge a reconsideration of the underlying assumptions because they are irrelevant to the concept of "good moral character," inevitably introduce ambiguous political considerations running counter to the nature and needs of our democratic society, and represent a reversion from the sounder assumptions underlying this Court's decisions of a century ago in the justifiably famous cases of *Ex parte Garland, supra,* and *Cummings* v. *Missouri,* 71 U.S. (4 Wall.) 277.

Our analysis of the problem begins with the statement of a principle that will not be in dispute in this Court, namely, that any qualification for membership in the Bar, whether imposed by court or legislature, must under the due process clauses of the Fifth and Fourteenth Amendments have a "rational connection with the applicant's fitness or capacity to practice law." *Schware* v. *Board of Bar Examiners, supra.* As Mr. Justice Frankfurter added in his concurring opinion:

> "From a profession charged with such responsibilities there must be examined those qualities of truth-speaking, of a high sense of honor, of granite

[10] *Gibson* v. *Florida Legislative Committee,* 372 U.S. 539; *Barenblatt* v. *United States,* 360 U.S. 109, 127-128; *Sweezy* v. *New Hampshire,* 354 U.S. 234, 266 (concurring opinion of Mr. Justice Frankfurter).

> discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character'." *Id.* at 247.

Except for occasions of political stress, this standard of good moral character has been historically limited to questions of personal morality, reliability and honesty necessary to assure adequate representation of clients in litigation and otherwise. Thus, in the first *Konigsberg* case, Mr. Justice Black referred to "good moral character" as representing in California "an absence of proven conduct or acts which have been historically considered as manifestations of moral turpitude." *Konigsberg* v. *State Bar, supra* at 263. Very recently the California Supreme Court reaffirmed this view in admitting to the Bar an applicant with a long series of arrests. *Hallinan* v. *Committee of Bar Examiners*, 421 P.2d 76 (Cal. 1966); see also CARDOZO, *J.* in *Matter of Rouss*, 221 N.Y. 81, 91. The decisions in Ohio have been consistent with this principle; one treatise summarizes them by stating that "honesty and fidelity are essential virtues of his calling."[11]

Disciplinary proceedings have been instituted against lawyers for fee splitting and other conduct in their capacity as attorneys deemed reprehensible.[12]

But political actions—not to mention the lesser acts of political association which apparently concern Ohio—have no connection whatsoever with one's "fair private character"—the significant phrase of *Ex parte Garland, supra* at 378, and hence, with the constitutional right to practice law. This Court recognized that fact in the companion case

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[11] 6 Ohio Juris. 2d, Attorneys at Law, § 11 citing *State ex rel. Kilborn* v. *Hand*, 9 Ohio 4. This treatise cites numerous Ohio decisions at §§ 6-64 to the same general effect. See also Page's Ohio Digest (1958), vol. 1, pt. 2 §§ 8-11.

[12] 6 Ohio Juris. 2d, Attorneys at Law, §§ 18, 28, 29, Ohio Ops. 171, *In re Burch*, 54 N.E. 2d 80 (conviction for failure to register as a foreign agent).

of *Cummings* v. *Missouri*, *supra* at 320, when it said of similar political disqualifications of clergymen:

> "It is manifest upon the single statement of many of the acts and of the professions and pursuits that there is no such relation between them as to render a denial of the commission of the acts at all appropriate as a condition of allowing the exercise of the profession and pursuits."

It is true that in difficult periods in this country attempts, sometimes successful, were made to deprive lawyers of their right to practice because of their political activities,[13] including those which were deemed to be and sometimes were serious violations of law. Examples include the actions taken or proposed against lawyers in New York State following the Revolution,[14] the test oaths introduced after the Civil War to prevent the practice of law by lawyers who took up arms against the government,[15] and the so-called Cold War period of our own century.[16] But the fact that lawyers, like other groups, subjected one another to oppression because of political activities does not in any way make such political activities, criminal or not, an index of bad moral character.

Political crime—because that is what we are dealing with—is not fungible with or any way related to private character. This has been recognized in other aspects of the law, the most familiar of which is the historic refusal of governments, including our own, to extradite persons charged with political crimes, however serious their char-

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[13] Rosenberg, *Constitutional Limitations on the Process of Admissions to the Bar*, 23 N.Y.U. Intra L. Rev. 135 (1968); Koenigsberg and Stavis, *supra*.

[14] See 2 Chroust, *The Rise of the Legal Professions*, 5-12 (1965).

[15] Koenigsberg and Stavis, *supra* at 119-120.

[16] Countryman, *Loyalty Tests for Lawyers*, 13 Law. Guild L. Rev. 149 (1953); Brown & Fassett, *supra;* Conference Working Group, *The Independence of the Bar*, *supra* at 159-172.

acter.[17] But there is no need to seek analogies in other fields since this Court's decision in *Ex parte Garland, supra,* where a future Attorney General of the United States [18] successfully overturned a statutory disqualification for practice in the federal courts based upon his participation in the rebellion against the United States. Nothing could have been more serious than the charges involved which included treason, as the dissenting opinion in this Court pointed out. Nevertheless, while the decision technically falls under the rubrics of bill of attainder and *ex post facto* law, it is a clear recognition that the serious political crimes on the part of Mr. Garland and other leaders of the Confederacy bore no rational connection with the issue of good moral character.

The considerations which move men under certain circumstances even to take up arms against their government, as *Garland* and *Cummings* indicate, are not evidence of moral turpitude, as our own history so well illustrates, and as we are reminded by the recent conviction of a leader of the South African Bar.[19] Professor Vern Countryman, in his masterly analysis of the problem many years ago, concluded that "[t]he power to license professions is not a power to license methods of governmental change." Countryman, *supra* at 156.

One is struck, given the mythology of our times, with the total absence of a basis for concluding that even a

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[17] Oppenheim, *International Law* (8th ed. 1955), Vol. I, 704-707, *A British Digest of International Law* (1965), 654, *et seq.*

[18] Garland, *Experience in the United States Supreme Court* (1898).

[19] Abram Fischer, a leader of that bar, was convicted on May 9, 1966 by the Pretoria Supreme Court on 15 counts of furthering the aims and objectives of the Communist Party and conspiracy to commit sabotage, and, five days later, sentenced to life imprisonment, *N.Y. Times*, col. 1, p. 5 (Jan. 29, 1966); col. 3, p. 2 (May 5, 1966), col. 2, p. 13 (May 10, 1966).

knowing and active member of an "advocating" organization will be derelict in his obligations as a lawyer. There is no evidence that lawyers in the Communist Party or in other so-called subversive organizations have been activated by anything but the highest level of professional ethics in the representation of their clients and behavior in the courts, including this Court. The reports of disciplinary committees and of reviewing courts are replete with instances of misconduct by members of the Bar, often culminating in disbarment. We have yet to see any evidence that political dissidency leads to or is causally connected with acts requiring disbarment.[20] Even the *ex parte* testimony before congressional committees with respect to membership by lawyers in the Communist Party and the reports of such plainly partisan committees have produced no evidence of dereliction by the lawyers of their responsibilities to the courts and their clients.

Constitutionally speaking, there is no distinction to be made here between members of and applicants to the Bar. Note, *Admission to the Bar Following Conviction for Refusal of Induction*, 78 Yale L. J. 1352 (1969); *Hallinan* v. *Committee of Bar Examiners, supra* at 81; the same good private character is required of both. The reasons successfully presented by the leaders of the Bar in the period of hysteria more than a decade ago in opposition to the proposed purge of Communist lawyers by test oaths and other means are equally persuasive as applied to the young men seeking to enter the profession today.

We submit, therefore, that even if Ohio were to rewrite its standards and to limit its interrogation to actual conduct in an attempt to meet tests of due process and of criminality, it would continue to violate the basic prin-

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[20] Along these lines, the exceptional case of disbarment after a conviction for violation of the Smith Act does not disprove this statement. See *Braverman* v. *Bar Ass'n*, 121 A. 2d 473, 481 (Md. 1956).

ciple which we urge to this Court, namely, that no political associations, activities or statements may, consistently with the Fourteenth Amendment, obstruct admission to the Bar.

C. Ohio's Investigatory Procedure Violates This Court's Rule Requiring Precision of Regulation in the First Amendment Area

Limiting our analysis to the instant case, there is no doubt that Ohio's screening program violates this Court's rule of precision which has been enunciated repeatedly in the last decade, particularly, to strike down as unconstitutional state legislation less vague and sweeping than Ohio's.

In *NAACP* v. *Button,* 381 U.S. 415, 438, the Court stated the governing principle, frequently reaffirmed thereafter,[21] that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms."

The "precision" rule is designed to safeguard the "breathing space" essential to the survival of First Amendment rights of free speech and free association (*id.* at 433; *Gibson* v. *Florida Legislative Comm.,* 372 U.S. 539, 544; *Keyishian* v. *Board of Regents,* 385 U.S. 589, 604).

The rule has a particularly important application in cases involving political investigation because it erects a barrier against governmental interference with an individual's right of associational privacy. As the Court declared in *NAACP* v. *Alabama,* 357 U.S. 449, 462, and again in *Gibson* v. *Florida Legislative Comm., supra* at 544: "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] . . . effective . . . restraint on freedom of association . . . This Court has recognized the vital

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[21] See *Aptheker* v. *Secretary of State, supra* at 512, 513; *United States* v. *Robel, supra* at 265; *Keyishian* v. *Board of Rgents, supra* at 603-604.

relationship between freedom to associate and privacy in one's associations . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."

Where, as here, state regulation affects important public, as well as private, interests "precision" is doubly crucial. *Cf. Sweezy* v. *New Hampshire, supra* at 265-267 (Mr. Justice Frankfurter concurring).

In regulating admission to its Bar, Ohio has failed to adhere to the rule of "precision" in three major respects:

(1) Assuming its legitimacy, Ohio's purpose can be achieved by a method having a far less "drastic" impact on First Amendment freedoms than does the present political screening program;

(2) Ohio's political test for admission, including its most recent assimilation of "advocacy" to "espousal", is vague and overboard; and

(3) Ohio's investigational apparatus, including the three questions petitioner has refused to answer, permits a sweeping and indiscriminate search of the applicant's political privacy without probable cause and without any of the "sensitive tools" which minimize the deterrent effect of political inquiry.

1. The First Amendment Requires That Ohio Abandon Its Political Screening Program and Adopt a Less Restrictive Alternative Method of Regulation.

Even assuming that Ohio has a legitimate and substantial interest in preventing "politically unfit" citizens from practicing law, the destructive effect on personal and public interests noted above, compels the state to choose a less restrictive alternative than the course presently followed.

It is a principle of long standing that "[m]ere legislative preferences" are not sufficient justification for effectuating a state purpose" by means that "[diminish] the exercise of rights so vital to the maintenance of democratic institutions." *Schneider* v. *State,* 308 U.S. 147, 161; *Thornhill* v. *Alabama,* 310 U.S. 88, 96. "The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton* v. *Tucker,* 364 U.S. 479, 488. See also *United States* v. *O'Brien,* 391 U.S. 367, 377; Note, *Less Drastic Means and the First Amendment,* 78 Yale L. J. 464 (1969).

Therefore, Ohio, like "Congress must achieve its goal by means which have a 'less drastic' impact on the continued vitality of First Amendment freedoms. The Constitution and the basic position of First Amendment rights in our democratic society demand nothing less." *Robel* v. *United States,* 389 U.S. 258, 268.

The dangers of a political screening program are well known. See *Schneider* v. *Smith,* 390 U.S. 17; *Keyishian* v. *Board of Regents, supra.* Such programs are comprised of two elements—inquisitorial investigation and prior restraint—which separately or in combination have been found, time and again, by this Court to pose a severe threat to the free exercise of First Amendment rights.

The wholesale invasions of political privacy instigated pursuant to the federal loyalty-security program, which Mr. Justice Douglas characterized as "the most blatant violations of the First Amendment we have ever known" [*Brandenburg* v. *Ohio,* 395 U.S. 444, 456 (concurring opinion)] serve to underscore by recent and tragic example the vulnerability of personal liberties when exposed to investigation and possible sanctions.

When viewed from the public interest in having available attorneys willing to offer sympathetic counsel to the politically outcast, the element of prior restraint stands out as the dominant vice in the screening program.

Respondents state that they will bar admission to applicants who "espouse illegal aims" [22] or who have espoused such aims in order to safeguard clients and courts from the possibility of unethical behavior by attorneys who have such political leanings. Ohio's blanket exclusion for past political acts bears close resemblance to the classic systems of prior restraint, where *all* future speech, lawful and unlawful, is prohibited to ensure that no unlawful speech will take place. See, *e.g., Carroll* v. *Princess Anne.,* 393 U.S. 175; *Schneider* v. *State,* 308 U.S. 147, 164; *Kunz* v. *New York,* 340 U.S. 290; *Thornhill* v. *Alabama,* 310 U.S. 88, 106; see generally McKay, *The Preference for Freedom,* 34 N.Y.U.L. Rev. 1182, 1184, 1191-1193.

Certainly, not all applicants who have "espoused illegal aims," assuming that such speech is unlawful, pose an imminent danger of engaging in unethical practice upon admission, See *supra,* p. 17. We see no justification for, and the Bar can ill afford the prior and complete restraint on these applicants from speaking and acting as attorneys.

Finally, there is the insistent question as to exactly what are the interests which Ohio seeks to protect. Upon realistic appraisal, it is difficult to conceive of the way a lawyer, as such, endangers the public safety. Countryman, *supra* at 156-157. Certainly, any threat of danger to clients or courts from "disloyal" attorneys is remote. Hence, the state is amply protected by the "less restrictive alternative" available in criminal or disciplinary sanctions. See *LSCRRC* v. *Wadmond, supra* at 149 (Motley, J. concurring and dissenting); *cf. Stanley* v. *Georgia,* 394 U.S. 557, 566-567; *Kunz* v. *New York, supra* at 295; *Thornhill* v. *Alabama, supra* at 106; *United States* v. *Spock,* — F. 2d — (1st Cir., decided July 11, 1969 [slip opinion at p. 4, n. 5 (majority) and at pp. 46-49 (Coffin, J. dissenting)].

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[22] See Respondents' Brief in Opposition to Petition, p. 13 (hereinafter "Res. Br.").

Where the choice is between a political screening program of the kind Ohio has established and subsequent punishment for defined conduct, in the context of actual and not imagined injury to state interests and under procedures ensuring a fair, speedy and reliable determination, we believe this Court will hold with Mr. Justice Brandeis that "[a]mong free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violation of law. . . ." *Whitney* v. *California*, 274 U.S. 357, 378 (concurring).

2. Ohio's Political Test for Admission is Unconstitutionally Vague and Overboard.

The substantive political test for admission to the Ohio Bar was revealed, for the first time—at least with respect to petitioner, in respondents' Brief in Opposition to the Petition (Res. Br. p. 13). Petitioner was therefore subjected to political interrogation without ever having been informed of the purpose for which he was being interrogated. *Cf. Watkins* v. *United States*, 354 U.S. 178. This, of course, is not an unusual practice in the field of political testing; frequently the political crime for which an individual has been subjected to investigation is left for the investigator to define at the completion of the investigation. See *e.g., The Proposed Anti-Communist Oath: Opposition Expressed, supra* at 125.

The test announced in respondents' Brief proscribes "espous[al] of . . . illegal aims" by an applicant either at the time he was a member of an "organization which espoused illegal aims" or at the time he presents his application for admission.

There are obvious defects in this test, such as absence of the requirement that the applicant's espousal coincide with that of the organization (compare *LSCRRC* v. *Wadmond, supra* at 131) which may be accountable to the fact that the test has never been formalized by statute, judicial rule or administrative regulation.

Other defects, however, evidence fundamental misconceptions regarding the scope of the First Amendment's protection of free speech . Even assuming that "espouse" means "advocate" and "illegal aims" means "violent overthrow of government," the political test is unconstitutionally overbroad under the decisions of this Court.

First, Ohio's test fails to observe the critical distinction between "mere advocacy" and "advocacy directed to *inciting or producing imminent* lawless action *and* is likely to incite or produce such action." *Brandenburg* v. *Ohio*, 395 U.S. 444, 447, 448, 449 n. 4 (emphasis added). In thus failing, the test "sweeps within its condemnation speech which our Constitution has immunized from governmental control," *Brandenburg* v. *Ohio, supra* at 448; from criminal punishment, *Noto* v. *United States*, 367 U.S. 290, 297-298; *Yates* v. *United States*, 354 U.S. 298; and from becoming the basis of a finding of moral or political unfitness, *Schware* v. *Board of Bar Examiners*, 353 U.S. 232; *Keyishian* v. *Board of Regents, supra* at 607.

Second, the Ohio test is defective when applied to the right of association. It does not incorporate the elements of *knowing* membership with *specific intent* to further the organization's aim of violent overthrow by *resort to unlawful conduct or advocacy*. Thus in *Keyishian* v. *Board of Regents, supra*, the Court reached a conclusion fully applicable to this case that "[m]ere knowing membership without a specific intent to further the unlawful aims of an organization is not a constitutionally adequate basis for exclusion" from the teaching profession and, we add, from the legal profession as well. *Id.* at 606. See also *Robel* v. *United States, supra* at 266; *Elfbrandt* v. *Russell, supra* at 17, 19; *Aptheker* v. *Secretary of State, supra*.

Third, the political test also suffers from vagueness, particularly in the use of the terms "espouse" and "illegal aims."

The ambiguity in the term "espouse" is comparable to the ambiguity of "aid," "support," "advice" and "counsel", terms found to be unconstitutionally vague in *Cramp* v. *Board of Public Instruction*, 368 U.S. 278. In *Cramp*, the Court queried whether a "lawyer who was representing the Communist Party or its members [could] swear with either confidence or honesty," as the oath involved required of teachers "that he had never knowingly lent his 'counsel' to the [Communist] Party?" *Id.* at 286. The Court concluded he could not. Our question is whether a lawyer or law student who was representing or associated with an attorney representing organizations or members of organizations advocating violent overthrow, could with confidence and honesty swear that he had never knowingly "espoused" or advocated the doctrine of violent overthrow. Again, the answer must be no. The vagueness of these terms leaves too much for governmental discretion in this area where experience has shown that attorneys and law students are particularly susceptible to being stereotyped by the political beliefs of their clients and other attorneys with whom they associate. See *Application of Levy*, 214 F. 2d 331 (5th Cir. 1954 rev'd 348 U.S. 978); *Schware* v. *Board of Bar Examiners, supra; Dombrowski* v. *Pfister*, 380 U.S. 479, 495 n. 12; *Loyalty Oaths for Lawyers: Opposition Expressed, supra*, at 125.

Substitution of the word "advocacy" for "espouse" does not, we believe, serve to cure the test's imprecision. *Keyishian* v. *Board of Regents, supra* at 600-601.[23] Inclu-

[23] The term "illegal aims" is particularly imprecise. See *Boyle* v. *Landry*, 280 F. Supp. 938 (D. Ill. 1968) *prob. juris. noted*, 393 U.S. 974, *rearg. ordered*, 395 U.S. 955. On its face it covers a myriad of offenses, some only misdemeanors or administrative violations. The element of violence is not necessarily included; nor are all "illegal aims" imbued with the quality of moral turpitude.

It should also be noted that "membership" in organizations advocating violent overthrow is a notoriously subjective concept. See *Killian* v. *United States*, 368 U.S. 231.

sion of mere advocacy with unlawful advocacy produces the vice inherent in all unconstitutionally vague government regulations—"the risk of unfair prosecution and the potential deterrence of constitutionally protected conduct"—*Cramp* v. *Board of Public Instruction, supra* at 283. For "advocacy" may well be taken to "prohibit [the admission] of one who merely advocates the doctrine in the abstract without any attempt to indoctrinate others, or incite others to action in furtherance of unlawful aims." *Keyishian* v. *Board of Regents, supra* at 599-600.

The test on its face, like the statutes in *Cramp* v. *Board of Public Instruction, supra; Keyishian* v. *Board of Regents, supra;* and *Baggett* v. *Bullitt,* 377 U.S. 360, is so vague as to create a license for arbitrary and discriminatory denial of the right to practice law; *cf. Konigsberg* v. *State Bar,* 353 U.S. 252, 263; *Stromberg* v. *California,* 283 U.S. 359, 369. The mere existence of such a license, with its "potential for arbitrarily suppressing First Amendment liberties" (*Shuttlesworth* v. *City of Birmingham,* 382 U.S. 87, 90-91) is constitutionally intolerable in the area of free expression where the "standards for permissible statutory vagueness are strict." *NAACP* v. *Button, supra* at 432, 433; *Baggett* v. *Bullitt, supra* at 374; *Speiser* v. *Randall,* 357 U.S. 513, 526.

Not only is petitioner's political speech and association exempt from judgment under Ohio's test, but in these circumstances petitioner may not be compelled to take even the first step in the political inquiry—he is exempt from answering associational interrogatories. *Cf. Speiser* v. *Randall, supra* at 529. For Ohio "may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation" to a legitimate state purpose. *Barenblatt* v. *United States, supra* at 127.

Under Ohio's test, exclusion from the Bar may be predicated on protected speech and association. There being nothing legitimate let alone compelling or subordinating about Ohio's interest, the constitutional hinge for political inquiry is broken. See *Gibson* v. *Florida Legislative Committee*, 372 U.S. 539, 546.

3. The Investigational Apparatus Violates the Rule of Precision by Permitting a Political Inquiry Without Probable Cause and Without Other Sensitive Procedural Tools.

a. *The Absence of Sensitive Investigatory Tools.*

The absence in the investigational apparatus of any of the "sensitive tools" (*Freedman* v. *Maryland*, 380 U.S. 51, 58; *Speiser* v. *Randall, supra* at 525) designed to obviate the dangers of political inquiry probably makes this apparatus the most intimidating aspect of the Ohio screening program.

There are no procedural or substantive checks on the breadth or depth of the respondents' inquiry; each applicant is subject to a limitless and roving search of his political life. Akin to a general warrant, the investigatory license claimed by respondents sanctions an indiscriminate search based on their political biases and predilections. The political investigation of applicants is, as respondents admit in their Brief in Opposition (Res. Br. pp. 12-13), merely initiated by the three sweeping, associational interrogatories petitioner refused to answer. An affirmative answer to question 12(g) or a membership disclosed in answer to questions 7 and 13 which evidences, in respondents' purely subjective view, "disrespect or disregard for law" (Res. Br. p. 13) triggers prolonged investigation, unlimited political interrogation and extensive delay in the final determination of the applicant's qualifications.

Respondents are therefore freed of formal or informal restraints to reward those applicants whose political

orthodoxy conforms to that of the respondents' and to penalize non-conforming applicants with intensive political examination. In contrast to the unobstructed road to admission facing an applicant whose "list of associations and clubs raises no question concerning [his] meeting the minimum standards," the applicant who reveals controversial associations is subjected to probing interrogation pursuant to unspoken accusations. Such disclosures automatically transform the undirected inquiry into an accusatory proceeding in which the applicant must prove the lawfulness of his associations or disprove the respondents' assumption of the unlawfulness of the organization involved.

At this point, the inquiry begins to feed upon itself. In response to interrogation—or in a self-exorcising effort to disclose every facet of his membership—an applicant may reveal radical beliefs and speech abrasive to respondents' concept of "respect for law." As a result new and broader areas are opened for respondents' unhesitating exploration.

The dangers in this are highlighted in part by petitioner's experience. During the personal interview conducted by Messrs. Lumpe and Snodgrass, petitioner was asked whether he was presently or had ever been a member "of the Communist Party, of any socialist party, or of the Students for a Democratic Society." Petitioner's answer to these questions was "no." (29a). Petitioner, in effect, also denied membership in any organization included on the "Attorney General's List." (*Ibid.*). The crucial and unsettling question, we respectfully submit that this Court must ask, is what would have been the consequences of petitioner's having acknowledged membership in any of these various organizations.

The converse of the problem relates to the chilling effect of the anticipated interrogation upon the college and law school actions of the applicant. With reputation and em-

ployment opportunities, not to speak of the right to political privacy, at stake, "[i]t would be a bold [attorney or prospective attorney] who would not stay as far as possible from utterances or acts which might jeopardize his living by enmeshing him in this intricate machinery." *Keyishian* v. *Board of Regents, supra* at 601.

We believe that if political fitness is a relevant criterion for admission and a political screening program is a permissible method for determining that fitness, it is imperative that the apparatus implementing this program incorporate standards and procedures to ensure that the process of regulation does not abridge freedom of expression and destroy the very interests which it has been designed to protect.

b. *The Absence of Probable Cause*

As applied, Ohio's statutory-judicial scheme authorizes a limitless and roving search into the personal and political life of every applicant. We have already shown that this sweeping authorization fails to meet the constitutional standard of "precision", *Shelton* v. *Tucker, supra*, where the Court condemned a narrower search as "unlimited and indiscriminate." *Id.* at 490. At this stage, we must treat of a related and equally serious violation of constitutional right: Ohio's invasion of an applicant's personal and political privacy without probable cause or foundation for inquiry.

This is precisely the kind of inquiry against which the Fourth Amendment is directed. For the constitutional prohibition of unreasonable searches and seizures has its historical roots in the investigations of political and religious dissenters—a situation similar to the present problem—at least in the political field. *Boyd* v. *United States*, 116 U.S. 616, 625-628; *Stanley* v. *Georgia, supra* at 598-599 (Mr. Justice Stewart concurring). As Mr. Justice Stewart pointed out in *Stanford* v. *Texas*, 379 U.S. 478, 482, the roots of the Fourth Amendment "go far deeper" than the general war-

rants of the pre-revoluntionary period in this country or in England. They are to be found in the Tudor period where "officers of the Crown were given roving commissions to search where they pleased in order to suppress and destroy the literature of dissent . . ."

The purpose of the Fourth Amendment was to safeguard the security of individuals against such arbitrary invasion by government officials, particularly in the religious and political areas, clearly the most sensitive to such abuse. The method imposed by the Constitution was the requirement of a warrant based upon probable cause or other reasonable basis for making such an inquiry in a particular case. The issue has been the subject of litigation most frequently in areas of criminal investigation unrelated to the First Amendment for a variety of reasons, including the relative recency of the application of the First Amendment to the States (see *Gitlow* v. *New York*, 268 U.S. 652) and of the incorporation of the search and seizure provisions of the Fourth into the Fourteenth Amendment. *Mapp* v. *Ohio*, 367 U.S. 643.

It is obvious, however, in the light of Anglo-American history, that the principles underlying the Fourth Amendment's proscription of unreasonable searches and seizures should be applied most liberally for the protection of the citizen in the area of the First Amendment. If this is true where even limited disclosures of political associations or activities are involved (see, *e.g.*, *Gibson* v. *Florida Legislative Committee, supra*), it is even more important to apply the rule where, as here, the demanded disclosures are virtually unlimited.

The few cases involving admission to the Bar which have reached this Court have not directly adjudicated this issue; it appears neither to have been directly raised nor to have had an adequate basis for doing so. Thus, in the second *Konigsberg* case the inquiry was a limited one relating to membership in a single named political organiza-

tion; the committee had independent evidence on the subject and the Court noted "gaps in the evidence presented" by the applicant, *supra* at 45. In the *Anastaplo* case, *supra*, where the applicant appeared *pro se*, the Court again was dealing with Communist Party membership, *supra* at 93 n. 154, and referred to the committee's "good faith belief in the need for exploratory or testing questions of the applicant," *supra* at 90. We note these distinctions not to indicate acquiescence in an inquiry with respect even to Communist Party membership, but because it is a distinction which the Court has regarded as material.

Passing the earlier Bar cases, which cast little light upon the issue as it is squarely posed here, the application of the "probable cause" principle to this case is not only consistent with the decisions in the basic search and seizure cases but with this Court's decisions in cases involving other types of governmental investigation into associations.

The point was made most explicitly in an earlier decision of this Court in *Barenblatt* v. *United States, supra* at 134, where Mr. Justice Harlan, after reciting evidence establishing contemnor's membership in the Communist Party, stated:

> "Nor did petitioner's appearance as a witness follow from indiscriminate dragnet procedures, lacking any probable cause for belief that he possessed information which might be helpful to the Subcommittee."

Subsequently, in *Gibson* v. *Florida Legislative Committee, supra* at 537, the Court prohibited an invasion of associational privacy in the absence of "an adequate foundation for inquiry."[24] Such a foundation, said the Court "is an essential prerequisite to demonstrating the im-

[24] In addition to the term "foundation," the Court characterized the requirement by such descriptive terms as "nexus" and "probable cause," *Gibson* v. *Florida Leglislative Committee, supra* at 545.

portant, substantial and subordinating state interest necessary to sustain its right of inquiry . . .," *id.* at 553; the dissenting opinion in that case did not question this general principle but differed as to whether a foundation had not, in fact, been laid by the Committee's witnesses, *id.* at 578. Mr. Justice Douglas, concurring, stated:

> "Whether the problem involves the right of an individual to be let alone in the sanctuary of his home or his right to associate with others for the attainment of lawful purposes, the individual's interest in being free from governmental interference is the same, and, except for the limited situation where there is 'probable cause' for believing that he is involved in a crime, the government's disability is equally complete." *Id.* at 569.

Such a foundation, this Court has held, must be established upon independent,[25] relevant [26] and substantial [27] evidence. *Cf. Uphaus* v. *Wyman,* 360 U.S. 72, 79.

This case is an even stronger one than *Gibson* for requiring an adequate foundation. The respondents are not merely collecting data for future legislation; they are possessed of an adjudicatory power to determine whether an applicant has engaged in unlawful political conduct. See *Willner* v. *Committee on Character and Fitness,* 373 U.S. 96. Since a proceeding which involves such a determination is by its nature accusatory—the applicant is the target of investigation—absence of an adequate foundation violates the applicant's due process rights to notice of charges and

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[25] *Sweezy* v. *New Hampshire, supra* at 255, 261 (Mr. Justice Frankfurter and Harlan concurring).

[26] *De Gregory* v. *New Hampshire Attorney General,* 383 U.S. 825, 830.

[27] *Gibson* v. *Florida Legislative Committee, supra* at 555, 556 and n. 7; *Speiser* v. *Randall,* 357 U.S. 513, 529.

to confrontation.[28] *Cf. In re Ruffalo*, 390 U.S. 544, 550-551; *Jenkins* v. *McKeithen*, 395 U.S. 411.

The unjustified and unwarranted intrusion into the privacy of applicants would be a novel doctrine even if this case involved the most compelling state interests—public health and public safety; see *Camara* v. *Municipal Court*, 387 U.S. 523; *See* v. *Seattle*, 387 U.S. 541; *Katz* v. *United States*, 389 U.S. 347; *Mapp* v. *Ohio*, 367 U.S. 643. Admission to the Bar does not, however, involve any comparable damage to the state. On the contrary, the danger is to the subject of the search, who has been and is subjected by this intrusion to a prior restraint in the exercise of his First Amendment rights. See *Marcus* v. *Search Warrant*, 367 U.S. 717; *A Quantity of Books* v. *Kansas*, 378 U.S. 205; *Freedman* v. *Maryland*, 380 U.S. 51; *Shuttlesworth* v. *Birmingham*, 394 U.S. 147, 155 n. 4, 159 (Mr. Justice Harlan concurring).

c. *The Particular Questions Put to Petitioner Are Improper.*

The mere recitation of the questions directly in issue here indicate their constitutional inadequacy. One question inquired as to past membership in "any" organization which "advocates the overthrow of the government of the United States by force," *supra*, p. 5. The other two called for the "names and addresses of all clubs, societies or organizations of which you are or have been a member, *supra*, p. 6. One was limited to the period beginning with registration as a law student, the other had no time limitation.

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[28] In due process terms, there is no logical distinction between disbarment and denial of admission; both affect substantial, legal interests of the individual. See *In re Ruffalo*, 390 U.S. 544; *Hallinan* v. *Committee of Bar Examiners*, *supra*; *cf. Greene* v. *McElroy*, 360 U.S. 474; *Schneider* v. *Smith*, *supra* at 25; *Speiser* v. *Randall*, *supra* at 525-526; *Wieman* v. *Updegraff*, 344 U.S. 183, 190-191.

1. These questions constitute the type of "unlimited or indiscriminate search" condemned by this Court in *Shelton* v. *Tucker,* 364 U.S. 479. There, the Court upheld the right of teachers to resist inquiry into all their associations over a five-year period. The Court characterized the inquiry as "unlimited" because, like the present interrogatories, it compelled a teacher to "list, without number, every conceivable kind of associational tie—social, professional, political, avocational, or religious." *Id.* at 488.

The instant case involves two questions covering "every conceivable organizational tie" (*supra*, p. 6), one of which is more defective than those in *Shelton* since it covers petitioner's entire lifetime (*ibid*).

Such a sweeping survey of a man's life violates his associational rights under the First Amendment because it rounds up more information than is relevant or material to any legitimate state interest and because it touches many areas in which the state has no interest at all. See *NAACP* v. *Alabama*, 357 U.S. 449; *Bates* v. *Little Rock*, 361 U.S. 516.

Schneider v. *Smith*, *supra*, reaffirmed the *Shelton* principle in the context of political interrogatories quite similar to those involved here. While in *Schneider* the Court found that there was no statutory authorization for the political inquiry undertaken by the Coast Guard Commandant, it did so in the context of recognizing the associational infringement worked by compelling an applicant for a seaman's license to affirm or deny membership in 250 listed organizations. The problem was confronted directly by Mr. Justice Fortas in his concurring opinion, joined by Mr. Justices Black and Stewart:

> "Reversal is dictated because the interrogatories which petitioner refused to answer offend the First Amendment. *Shelton* v. *Tucker, supra.* (They also pass the outermost bounds of reason. No agency may be permitted to require of a person, subject

> to heavy penalty, sworn essays as to his 'attitude toward the form of government of the United States' or 'full particulars', under oath, without time limit, as to contributions made and functions attended with respect to 250 organizations.)" *Id.* at 489.

Question 12(g) alone sweeps more broadly into associational privacy than the interrogatories rebuked by the Court in *Schneider*. In contrast to the *Schneider* inquiry concerning membership in 250 organizations, question 12(g) herein seeks an applicant's affirmation or denial of membership, no matter how stale,[29] in an unlimited number of organizations, whose purposes he must guess at his peril. If he affirms membership under 12(g) the applicant is directed to immediately give a full and detailed explanation.

The purely roving nature of the three Ohio interrogatories is all the more reprehensible because a negative answer to 12(g), or an innocuous list of organizations disclosed in answer to 7 and 13 are more than information which the respondents improperly secure only to discard. Rather, respondents admit that they use such information as evidence that an applicant's associations "[raise] no questions" (Res. Br. p. 13) and that he has a safely orthodox or apolitical background. Not only is it most unreasonable for respondents to ascertain political character by this process of inverse reasoning, but it places a premium upon a showing of conventional associations, for it provides the basis for respondents' practice of selectively intensifying the political examination for those applicants whose political associations do not conform to respondents' standard of orthodoxy.

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[29] See *DeGregory* v. *New Hampshire Attorney General, supra.* This Court has occasion to consider a related aspect of staleness—that relating to the possibly changing purposes of organizations. *Veterans of the Abraham Lincoln Brigade* v. *Subversive Activities Control Board*, 380 U.S. 513.

The Court's conclusion in *Shelton* v. *Tucker*, *supra* at 490, is equally applicable to Ohio's associational inquiries. For they plainly constitute a "comprehensive interference with associational freedom [which] goes far beyond what might be justified in the exercise of the State's legitimate inquiry into the fitness and competency" of applicants to its Bar.

2. In addition to being invalid under *Shelton* v. *Tucker*, *supra*, and *Schneider* v. *Smith*, *supra*, question 12(g)'s inquiry concerning membership in organizations advocating the overthrow of government by force suffers from other constitutional infirmities.

(a) The most obvious defects are the two pointed out by Judge Friendly in *LSRRC* v. *Wadmond*, *supra* at 131 with respect to a similar New York question,[30] namely, first, that 12(g) does not require the organizational advocacy to coincide with the applicant's period of membership, and second, that it is not limited "to cases where the applicant knew of the teaching or advocacy." *Ibid.* Again, it is the question's potential for sweeping in associational ties having no bearing on the moral and political fitness of applicants which prompted Judge Friendly's conclusion that the state's interest "can be adequately protected by a question more narrowly phrased." *Ibid.*

(b) There are fundamental defects, however, in question 12(g) which cannot be erased by the narrow phrasing Judge Friendly sugests.

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[30] "26. Have you ever organized or helped to organize or become a member of or participated in any way whatsoever in the activities of any organization or group of persons which teaches (or taught) or advocates (or advocated) that the Government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means? — If you answer is in the affirmative, state the facts below."

See *LSCRRC* v. *Wadmond*, *supra* at 129.

The question is not restricted in its coverage to organizations whose advocacy "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." See *Brandenburg* v. *Ohio*, 395 U.S. 444, 447 and n. 2, 448-449. Therefore, as we stated earlier, Ohio's regulation fails to "observe the established distinction between mere advocacy and incitement to imminent lawless action." *Id.* at 449 n. 4. In short, the question's breadth violates the rule of precision because it compels disclosure of ties with organizations having purely lawful purposes. Such associations have no relevance to any legitimate criteria for admission. *Cf. Sweezy* v. *New Hampshire*, *supra* at 266 (Mr. Justice Frankfurter concurring).

Likewise, 12(g) violates the rule of precision because it is not confined to membership (i) with specific intent to further the unlawful purposes of an organization (ii) by resort to advocacy "directed to inciting or producing imminent lawless action and is likely to incite or produce such action" or other unlawful conduct. *Brandenburg* v. *Ohio*, *supra*; *Yates* v. *United States*, 354 U.S. 298, 321-322.

Recognizing that "[a] number of complex motivations may impel an individual to align himself with a particular organization" (*United States* v. *Robel*, *supra* at 266 n. 16) it would be unreasonable to infer unlawful membership from mere knowing membership for the purpose of justifying an unlimited search into the nature and circumstances of membership. Ohio may neither deny an applicant's admission, nor single him out for an intensive investigation having accusatory overtones on the basis of lawful speech and association. A contrary rule would invest respondents with an unbridled power to discriminate against an applicant whose speech or associations they disapprove by rigorous political examination and limitless intrusion into political privacy.

(c) Upon giving an affirmative answer to question 12(g) an applicant is automatically required to explain fully, in detail and to respondents' satisfaction the nature and circumstances of his membership. In effect, a presumption of unlawful membership arises from disclosure of mere knowing membership which the applicant bears the burden of rebutting by demonstrating the lawfulness of his association, and more broadly, his "loyalty."

To overcome the presumption against him, the applicant is compelled to reveal every facet of his association to respondents' scrutiny. He must then submit to probing interrogation testing his assertion of non-knowing membership or his denial that he or the organization "espoused" or in fact ever had illegal aims. This quite naturally leads to a thorough review of the applicant's beliefs and entire political background.

This procedure has four elemental defects.

(i) A presumption of unlawful membership derived from the mere fact of knowing membership is irrational and the applicant may not be constitutionally required to bear the burden of rebutting it.

The presence of First Amendment considerations requires strict application in this case of the principle announced in *Tot* v. *United States*, 319 U.S. 463 that a "presumption cannot be sustained if there is no rational connection between the fact proved and the ultimate fact presumed." *Id.* at 467-468. *Cf. Speiser* v. *Randall*, *supra*. Respondents' presumption has been undercut by this Court's declaration that it is "an assertion of arbitrary power" (*Wieman* v. *Updegraff*, *supra* at 191) to automatically infer, as respondents have, that all knowing members of the Communist Party, for example, share its illegal purposes or participate in its illegal conduct. See *Schware* v. *Board of Bar Examiners*, *supra* at 246; *United States* v.

Brown, 381 U.S. 437, 456. Further, as the Court stated in *Schneiderman* v. *United States*, 320 U.S. 118, 136:

> "Under our traditions, beliefs are personal and not a matter of mere association, and men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms of asserted principles."

In light of these findings, it plainly strains "the circumstances of life as we know them" (*Tot* v. *United States*, *supra* at 468) to find a taint, as respondents have, on every applicant who answers 12(g) affirmatively.

(ii) An affirmative answer to 12(g) impermissibly casts the burden on the applicant of proving the legality of his association. The vice of this procedure was condemned in *Speiser* v. *Randall*, *supra*:

> "The man who knows that he must bring forth proof and persuade another of the lawfulness of his conduct necessarily must steer far wider of the unlawful zone than if the State must bear these burdens. This is especially to be feared when the complexity of the proofs and the generality of the standards applied, *cf. Dennis* v. *United States*, *supra*, provide but shifting sands on which the litigant must maintain his position. . . . In practical operation, therefore, this procedural device must necessarily produce a result which the State could not command directly. It can only result in a deterrence of speech which the Constitution makes free." *Id.* at 526.

This procedure was also the subject of Circuit Judge Wright's concurring opinion in *Haskett* v. *Washington*, *supra*. Judge Wright held that teachers refusing to swear to an oath of non-membership in organizations advocating violent overthrow could not constitutionally be compelled to bear the burden of rebutting an adverse presumption arising from such refusal.

If, as in *Speiser*, an applicant for a property-tax exemption may not be required to submit to the procedure we

complain of here because it inhibits the exercise of First Amendment rights, can there be any question but that the same right is enjoyed by an applicant to the bar who, after undergoing a long and expensive period of training and with his profession and reputation at stake, confronts this procedure.

(iii) The presumption of unlawful membership arising from an affirmative answer to 12(g), like a similar presumption considered in *Keyishian* v. *Board of Regents*, *supra* at 608, is irrebutable. *Ibid.*

In *Keyishian*, the Court invalidated a New York statute making membership in the Communist Party or in any organization that advocates violent overthrow *prima facie* evidence of disqualification from teaching in the public schools. The teacher could only rebut the presumption by denying membership, by denying that the organization advocated violent overthrow or by denying that he had knowledge of such advocacy. "Thus proof of non-active membership or a showing of the absence of intent to further unlawful aims", the Court concluded, "will not rebut the presumption and defeat the dismissal." *Id.* at 608.

Under the Ohio scheme, an applicant may overcome the presumption and establish his innocence only by (1) denying the membership, (2) denying that the organization had illegal aims, or (3) denying that he "espoused then or now" such illegal aims. Thus, it would serve no purpose for an applicant to prove (1) that he had no knowledge of the organization's unlawful aims, (2) that his "espousal" was not directed toward inciting or producing imminent lawless action and likely to produce or incite such action or (3) that he lacked the specific intent to further the organization's illegal aims by resort to unlawful speech or conduct. While these elements are essential to defining criminal associations, Ohio takes no account of them in its standard. As such, Ohio's standard, like the statute in *Keyishian*,

"sweep[s] overbroadly into association which may not be proscribed." *Keyishian* v. *Board of Regents, supra* at 608.

(iv) A further pernicious feature of this presumption is that respondents' determination that an organization advocates violent overthrow is not the product of an actual review of the organization's history or purposes made under the procedural safeguards demanded by *Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123. Respondents therefore are free to assume that advocacy of violent overthrow is the purpose of any number of organizations. As illustrated by petitioner's experience in being questioned about membership in the Communist Party, any socialist party, Students for a Democratic Society or any organization on the "Attorney General's List", the respondents judge an organization by its controversial nature, or by their own or some other governmental agency's political biases.

As a consequence, an applicant may be forced to bear the burden of demonstrating the lawful character of an organization to which he belongs, even though there is no evidence or support for the respondents' determination that it advocates violent overthrow.

An analogous procedure was considered in *Dombrowski* v. *Pfister*, 380 U.S. 479 and held invalid. In contrast to respondents' open-ended and fluctuating "designation" of organizations advocating violent overthrow, *Dombrowski* concerned the comparatively narrow list of Communist-front organizations compiled by the Attorney General of the United States, the Subversive Activities Control Board or the committees and subcommittees of Congress. Appellants in *Dombrowski* sought invalidation of a Louisiana statute creating criminal penalties for failure to register as a member of a Communist-front organization as defined by another statutory provision. Listing by the foregoing agencies was made presumptive evidence that an organization was a Communist-front; the presumption was not lim-

ited to organizations cited after compliance with the requirements of *Anti-Fascist Committee* v. *McGrath, supra.*

The Court ruled that:

> "A designation resting on such safeguards is a minimum requirement to insure the rationality of the presumptions of the Louisiana statute, and in its absence, the presumptions cast an impermissible burden upon the appellants to show that the organizations are not Communist fronts." *Dombrowski* v. *Pfister, supra,* at 496.

The same irrationality inheres in 12(g). In the absence of a prior determination made under the procedural safeguards outlined in *Anti-Fascist Committee* v. *McGrath, supra,* respondents may not reasonably presume that an organization in which an applicant held or holds membership advocates violent overthrow; nor may it reasonably compel the applicant to establish the lawful character of that organization.

D. The Power to Judge the Morality of An Applicant's Political Activities Can Never Be Adequately Circumscribed to Avoid Abuse

We believe that infringement of the First Amendment rights of applicants is not so much the fault of respondents as it is the unavoidable consequence of their undertaking. For there is substantial question as to whether the power to determine political fitness can ever be delegated and administered with constitutional precision. In *Schware* v. *Board of Bar Examiners, supra,* this Court found that the standard for political disqualification requires a finding of moral turpitude in connection with illegal political conduct. *Id.* at 242-243). The difficulty in defining or implementing this standard is compounded by the further requirement that the moral implications of an applicant's political conduct must be assessed in terms not only of contemporary but future community values. See *Schware* v. *Board of Bar Examiners, supra; Hallinan* v. *Committee of Bar Examiners, supra,* at 86-87. Even if the respondents could exclude

subjectivity from their judgments, the task of making a determination is overwhelming particularly in the area of political activities, where community standards are inevitably in a state of constant flux. But, in reality, the power to review the morality of another's political conduct is an open invitation to caprice and arbitrariness.

E. Petitioner Was Denied Due Process of Law Because There Is No Evidence in the Record That He Obstructed the Respondents' Investigation

Respondents justify denying petitioner's admission on the grounds that he *obstructed* their investigation of his character; but neither the committee nor the court below made findings of fact, as constitutionally required, to support their bald conclusion of obstruction. See *Wood* v. *Georgia,* 370 U.S. 375, 386-387; *Schware* v. *Board of Bar Examiners, supra* at 239.

Nor did respondents make any effort before this Court to explain in particular how petitioner obstructed the investigation. As illustrated by their Brief in Opposition to the Petition, respondents' case of obstruction is nothing more than conjecture: "[T]he requested information *may* provide a valuable insight (Res. Br. at 12) . . . the answers *might* show little need to proceed further (ibid.) . . . knowledge of such organizations and associations *might* well direct the committee's attention to persons familiar to them who have known the applicant" (*id.* at 13) (emphasis supplied).

This case is wholly unlike *Konigsberg* v. *State Bar, supra.* There are no "gaps" to fill here, and the record concerning the petitioner's political fitness is not in a state of "uncertainty." *Id.* at 45, 46. To the contrary, on the basis of this record, respondents' insistence that petitioner answer the three questions is merely *pro forma.* The information sought by these questions was already in respond-

ents' hands *via* the New York questionnaire which contained similar questions which petitioner had answered. Furthermore, petitioner's refusal could hardly be termed obstruction, since he answered the committee's questions concerning particular associations. Compare *Konigsberg* v. *State Bar, supra* at 39 [applicant refused "to answer *any* questions relating to membership in the Communist Party" (emphasis supplied)].

POINT II

PETITIONER'S ASSERTION OF HIS CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION SHOULD BE SUSTAINED.

The issues previously presented pose most serious problems relating to the right of association, the independence of the Bar and freedom from intrusion guaranteed by the First Amendment which, it is hoped, will resolve the issues in this case. We, however, believe it important as well that there be explicit recognition of the right of applicants to decline to answer questions based upon their constitutional privilege against self-incrimination. This ground, separately stated in petitioner's response to the committee and in this Court, is an independent basis for an attack upon Ohio's actions.

Petitioner had a constitutional right under the Fourteenth Amendment, incorporating the Fifth, to assert his privilege against self-incrimination in Ohio's inquiry. There is no need at this late date for a discussion of the history, scope and proper construction of the privilege. This Court has discussed the matter in recent years in cases ranging most notably from *Emspak* v. *United States,* 349 U.S. 190, to *Uniformed Sanitation Men Association, Inc.* v. *Commissioner of Sanitation of the City of New York,* 392 U.S. 280; see also *Quinn* v. *United States,* 349 U.S. 155. It has extensively explored the policies underlying the privilege, *Ullman* v. *United States,* 350 U.S. 422. It has broadly construed it in *Marchetti* v. *United States,* 390 U.S. 39 and

Leary v. *United States*, 395 U.S. 6. It has held it applicable to the states in *Malloy* v. *Hogan*, 378 U.S. 1 and *Garrity* v. *New Jersey*, 385 U.S. 493. It has applied it specifically to members of the bar in *Spevack* v. *Klein*, 358 U.S. 511.

Last term this Court held that the privilege was available to all public employees, *Gardner* v. *Broderick*, 390 U.S. 918; *Uniformed Sanitation Men Association, Inc.* v. *Commissioner of Sanitation of the City of New York*, *supra*. It applies to all forms of interrogation in the absence of a statutory grant of immunity.[31] There is and could be no question as to petitioner's good faith in asserting that privilege in the light of the nature of the associational questions asked and the existence of both state and federal statutes in the area of sedition.

The constitutional position of an applicant for membership in the Bar is at least as strong as that of a public employee. This Court in *Spevack* v. *Klein*, *supra*, held that a member of the bar was entitled to assert his privilege; some members of the Court suggested that that right might be superior to that of a public employee. Undoubtedly, the Court had in mind the long tradition, particularly in the New York courts, of upholding the constitutional privilege for members of the Bar. See, *e.g.*, *Matter of Grae*, 282 N.Y. 428; *People* v. *Kaffenburgh*, 188 N.Y. 49; *Matter of Ellis*, 282 N.Y. 435.

The same right should pertain to applicants for admission to the Bar who, like lawyers, are not public employees (see *Cammer* v. *United States*, 350 U.S. 817) and who are entitled to the full exercise of their constitutional rights. Courts and commentators have noted in other con-

[31] See the illuminating decision of the District Court in the aftermath of this Court's decision in *Uniformed Sanitation Men Association, Inc.* v. *Commissioner of Sanitation*, *supra*,—Judge Tyler's opinion No. 36142, *Uniformed Sanitation Men Association, Inc.* v. *Commissioner of Sanitation of the City of New York*, 66 Civ. 4307 (S.D.N.Y. 1969), unreported, copies of which have been filed with the Clerk of this Court.

nections the penalizing effect of a denial of admission to the Bar after years of legal studies and have assimilated the character requirements of admission to those of retention of status as a member of the Bar. See, *e.g.*, *Hallinan* v. *Committee of Bar Examiners, supra,* and Note, *Admission to the Bar Following Conviction for Refusal of Induction, supra.*

Finally, it should be noted that this case does not involve even the narrow accounting of stewardship referred to in the opinion of this Court in *Uniformed Sanitation Men Association, Inc.* v. *Commissioner of Sanitation, supra* at 280, 285. The unrestricted scope of the inquiry in Ohio makes this an even more appropriate case for the assertion and the vindication of the privilege against self-incrimination. The same free-wheeling inquiry which infringes upon an applicant's freedom of association furnishes a most appropriate foundation, by the magnification of the perils, for the assertion of the constitutional privilege against self-incrimnation.

CONCLUSION

The order below should be reversed with instructions to admit petitioner to the Ohio Bar Examination.

Respectfully submitted,

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November 10, 1969

APPENDIX A

Rule XVII: Admission to the Practice of Law

Section 1. General Requirement.

Except as provided in Section 8 of this rule, to be admitted to the practice of law in Ohio, a person must

(A) be a citizen of the United States;

(B) be 21 years of age;

(C) have earned, prior to admission to law school, a bachelor's degree approved by the Court or earned in a college or university approved by one of the following accrediting associations: Middle States Association of Colleges and Secondary Schools, New England Association of Colleges and Secondary Schools, North Central Association of Colleges and Secondary Schools, Northwest Association of Secondary and Higher Schools, Southern Association of Colleges and Secondary Schools, and the Western College Association;

(D) have a degree from a law school which is approved by the American Bar Association and if located in Ohio, is also a member of the League of Ohio Law Schools;

(E) be approved as to character under procedures provided in this rule;

(F) have passed an examination conducted by the Ohio Board of Bar Examiners; and

(G) have taken the oath of office.

Section 2. Preliminary Registration Requirements.

(A) Every person who intends to take the Ohio bar examination shall file with the Clerk of this Court, within 120 days after entering law school, an application for registration as a candidate for admission to the practice of law

on a form prescribed and furnished by the Court. The application shall be accompanied by

(a) a certificate of the dean of the law school showing that the applicant has begun the study of law;

(b) a properly authenticated transcript of college credits showing that prior to admission to law school the applicant has earned a bachelor's degree;

(c) a character questionnaire in duplicate prescribed and furnished by the Court;

(d) a fingerprint identification on the form used by the Federal Bureau of Investigation; and

(e) a registration fee of twenty dollars. (Effective Sept. 1, 1963.)

Section 3. Character Investigation.

(A) The president of each local bar association shall appoint a Committee on Applicants for Admission to the Practice of Law consisting of three or more members each of whom shall serve without compensation for a term of three years. One-third of the committee member's terms shall expire each year. These committees shall be responsible for investigating the character, reputation and moral qualifications of applicants and shall report their findings and recommendations to the Clerk of this Court.

(B) If the applicant is a resident of Ohio, one copy of the questionnaire required by Section 2 shall be forwarded by the Clerk to the Committee on Applicants for Admission to the Practice of Law in the county where the applicant claims permanent residence.

(C) In conducting the investigation, the local committee shall utilize the applicant's character questionnaire and

shall also obtain answers to questionnaires from three citizens in the county, none of whom is related to the applicant. Two members of the committee shall personally interview the applicant and record the results on a form prescribed by the Court.

(D) This Court shall determine from the report of the local bar association committee and from other available information whether the applicant shall be accepted for registration. The Clerk shall notify each applicant concerning the acceptance or rejection of the application.

(E) If the applicant is a nonresident, the Clerk shall take such steps as are feasible to provide for character investigations as nearly as possible in conformity to the above procedures.

Section 4. Application for Examination.

(A) Applications to take the examination shall be filed with the Clerk of this Court at least 90 days before the time fixed for the examination. Each application shall be accompanied by

(a) the applicant's affidavit that he has read and studied the Canons of Professional Ethics adopted by the American Bar Association and approved by this Court;

(b) a certificate from the law school that the applicant has or will have received a law degree, is a person of good moral character, has sufficient knowledge and ability to discharge the duties of an attorney at law and has received instructions in legal ethics;

(c) a questionnaire in triplicate furnished by the Court updating the information on character and moral fitness furnished at the time of registration; and

(d) a fee of forty dollars refundable only in the event of disapproval. (Effective September 1, 1963.)

(B) This Court shall pass on the application and the Clerk shall notify the applicant of the Court's approval or disapproval.

Section 5. Bar Examination.

(A) The bar examination shall be prepared and conducted under the direction of the Board of Bar Examiners appointed by the Court and consisting of ten members of the bar of Ohio. The members of the board shall serve terms of five years and shall be so appointed that the terms of two examiners will expire each year.

(B) Two examinations shall be held each year in Columbus. One shall begin on the first Tuesday in March and the other on the last Tuesday in July. Each examination shall continue for three days and shall be divided into six half-day sessions. Each examiner shall prepare and submit five questions, of which the applicants shall answer four. The subject matter of the questions shall not be designated or labeled.

(C) The examination shall consist of the following:

Subjects	*Number of Questions*
Business Associations (including Agency, Partners and Corporations)	8
Constitutional Law	5
Contracts	5
Criminal Law	2
Equity, Trusts and Wills	8
Evidence	5
Negotiable Instruments	2
Property (Real and Personal)	5
Pleading and Practice	5
Torts	5

(D) No applicant shall be admitted to the practice of law unless a grade of 75 per cent is received on the examination. The grades as determined by the Board of Bar Examiners shall be final.

(E) The Board of Bar Examiners may, subject to the approval of the Court, promulgate additional rules to aid in the conduct of the examinations.

Section 6. Re-Examination.

(A) Applicants for re-examination may apply for admission to the March examination only. No applicant will be admitted to more than three examinations.

(B) Applications must be filed with the Clerk of this Court at least 90 days before the time fixed for examination.

(C) Before being admitted to the examination, the applicant must again be approved by the local Committee on Admissions to the Practice of Law.

(D) Each application for re-examination, submitted on a form prescribed by the Court, must be accompanied by a fee of sixty dollars refundable only in the event the application is disapproved. The fee for a second re-examination is seventy dollars.

Section 7. Induction to the Bar.

(A) Each successful applicant and each person admitted under Section 8 must sign a roll designating his residence and take the following oath of office:

I Do Solemnly Swear:

I will support the Constitution of the United States and the Constitution of the State of Ohio;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense ex-

cept such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and I will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality and advance no pact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed or delay any man's cause for lucre or malice. So HELP ME GOD.

(Clerk's note: This form of oath was adopted January 25, 1910. It is the form recommended by the American Bar Association.)

(B) A fee of ten dollars shall be charged for each certificate of admission. A charge of one dollar shall be made for a duplicate certificate of admission.

Section 8. Admission Without Examination.

(A) An applicant for admission to the practice of law in Ohio without examination must file the following with the Clerk of this Court:

(a) a certificate of admission as an attorney at law in the highest court of another stae or in the District of Columbia;

(b) a certificate, signed by a judge of a court of record of the state from which he seeks admission, indicating that the applicant is of good moral character and is in good standing in the bar of that state;

(c) certificates evidencing education equal to the requirements prescribed by this Court for admission to the practice of law in Ohio in effect at the time the applicant was admitted in such other state;

(d) evidence showing that applicant has, for at least five years, engaged in legal work of such character and description as shall satisfy this Court that the applicant possesses the legal skills deemed adequate for admission to the practice of law in Ohio without examination;

(e) a certificate by an attorney at law of this state that the applicant is of good moral character and recommending him for admission to the practice of law in Ohio;

(f) applicant's affidavit that he is a citizen of the United States and that he is a resident of this state or intends to come into the state for the purpose of making it his permanent residence (if the applicant is not a resident of Ohio, his certificate shall not be issued until he has established residence in this state);

(g) an application and questionnaire, in duplicate, for use by the National Conference of Bar Examiners in making a character investigation;

(h) a fingerprint identification card on the form used by the Federal Bureau of Investigation;

(i) a nonrefundable fee of one hundred and fifty dollars.

(B) This Court shall pass on the application, and the Clerk shall notify the applicant of the Court's approval or disapproval.

RESPONDENT'S

BRIEF

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DEC 5 1969

JOHN F. DAVIS, CLERK

Supreme Court of The United States

October Term, 1969

No. 18

In the Matter of the Application of
MARTIN ROBERT STOLAR,
Petitioner.

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Supreme Court of The United States

October Term, 1969
No. 75

In the Matter of the Application of
MARTIN ROBERT STOLAR,
Petitioner.

BRIEF FOR RESPONDENTS

CONSTITUTIONAL PROVISION INVOLVED

The only constitutional provision which has been properly and timely brought in issue is the Fifth Amendment of the United States Constitution. That is the only basis given by petitioner for his refusal to answer the questions involved herein.

QUESTION PRESENTED

Petitioner has not accurately stated the questions presented for review. The constitutional issues claimed by petitioner have no basis under the facts of this case.

The admissions committee of the Columbus Bar Association was investigating petitioner to determine whether or not he possessed the necessary qualifications to be admitted to the practice of law in this state. Petitioner refused to answer questions designed to provide relevant information necessary for such determination. He therefore obstructed the investigation of the Bar committee and prevented it from making the required determination.

The only question properly presented for review is whether an applicant for the Ohio Bar may refuse to answer questions relative to his qualifications thus preventing a proper determination of those qualifications to practice law, and base this refusal on the Fifth Amendment of the Constitution. The question is not presented

as to whether the applicant would have been excluded had he answered such questions. The constitutional issues stated by applicant as "Questions Presented" in his Brief, are therefore not involved in this case.

ARGUMENT

The people of the State of Ohio have a vital and substantial interest in the quality and ability of persons admitted to the practice of law in Ohio. It is important that only those persons who possess the required qualifications, including moral qualifications, be permitted to practice law. The people of Ohio, by constitutional mandate, have placed on the Supreme Court of Ohio the responsibility for insuring that those admitted to the practice of law are properly qualified.

Requiring all attorneys to be properly qualified is necessary not only to assure the orderly and efficient administration of the law, but also to assure the public of proper representation. This becomes more and more important as society becomes more complex and the law touches the lives of more people. There are few areas of activity which do not have serious legal implications. People must therefore rely more upon attorneys to guide their conduct and to protect their interests. The public often has no way of determining the qualifications of an individual attorney. People must, therefore, be able to assume that all persons who are licensed by the state to practice law are trustworthy and possess the required skills.

The authority and responsibility conferred upon attorneys is extraordinary. Attorneys in criminal cases are entrusted with the lives and liberty of their clients. In civil litigation they have apparent authority to stipulate facts and negotiate and enter into settlements for their clients. Attorneys, by virtue of their profession are more

likely to be appointed trustees, guardians, or administrators. Numerous other examples of their authority could be given. Mr. Justice Frankfurter, in his concurring opinion in *Schware v. Board of Bar Examiners,* 353 U.S. 232 at 247 (1957) defined the position of lawyers as follows:

> • • • [A]ll the interests of man that are comprised under the constitutional guarantees given to 'life, liberty and property' are in the professional keeping of lawyers. It is a fair characterization of the lawyer's responsibility in our society that he stands "as a shield," to quote Devlin, J., in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, or granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character'.

This Court has recognized the need for requiring high standards of qualifications, including moral qualifications, for admission to the practice of law and the right of the State to exclude applicants who lack such qualifications. *Schware* v. *Board of Bar Examiners,* 353 U.S. at 239; *Konigsberg* v. *State Bar of California,* 366 U.S. 36 at 40-41 (1961); *In Re Anastaplo,* 366 U.S. 82 (1961).

The Supreme Court of Ohio works through the admissions committees of the local bar associations to investigate the qualifications of applicants to practice law in Ohio. In the instant case the admissions committee of the Columbus Bar Association was responsible for investigating petitioner. This committee is made up of practicing attorneys who contribute their time and efforts. Their work was appropriately described by Mr. Justice Goldberg in his concurring opinion in *Willner* v. *Committee on Character and Fitness,* 373 U.S. 96, 107 (1963) as follows:

> • • • Committe members are usually unpaid and serve in fulfillment of their obligation to the profession

> and as officers of the court. They perform an indispensable and very often thankless task. While the vast majority of candidates are approved without difficulty, in exceptional cases, such as this, either information supplied by the applicant himself or material developed in the course of the committee's investigation gives rise to questions concerning the applicant's moral character. * * *

As a practical matter, the admissions committee and its members who contribute their time and efforts, cannot make an extensive independent investigation of each applicant. This is especially true in situations where, as here, the applicant is not a resident of the state. It must obtain the required information in some other way. Much of the information relative to his fitness is under the control of the applicant. The admissions committee must be able to require the applicant to furnish such information. The committee, however, is not limited to the information which the applicant wishes to volunteer. Neither is it bound by the evidence produced by the applicant. In either case it is unlikely that it would ever learn the negative aspects of applicant's character and conduct. If the committee wishes to properly determine which candidates are properly qualified, it must be able to obtain all the relevant information. It, therefore, requires the applicant to answer certain questions designed to produce this information. *In Re Anastaplo,* 366 U.S. 82 U.S. at 90 (1961).

Both written questionnaires and personal interviews have historically constituted means of determining the qualifications of applicants. This Court has recognized the desirability of such questioning and described it as follows:

> * * * This interrogation may well be of decisive importance for, as all familiar with bar admission proceedings know, exclusion of unworthy candidates frequently depends upon the thoroughness of the Committee's questioning revealing as it may infirmities in

an otherwise satisfactory showing on his part. This is especially so where a bar committee, as is not infrequently the case, has no means of conducting an independent investigation of its own into an applicant's qualifications. (*Konigsberg* v. *State Bar of California, supra,* at 42.)

The questions involved in this case were designed to disclose information which would enable the committee to know more about the applicant and to test the evidence produced by him as to his character.

The questions were designed solely to produce information from which the committee could determine the applicant's fitness to be admitted to the practice of law. The questions were not designed to test applicant's political beliefs. There is no showing in the record of this case that association in any group would result in applicant's exclusion from the bar. There is, therefore, no problem about the claimed "chilling effect" upon freedom of association. The answers might disclose the names of associates who have known petitioner intimately for some period of time. The committee could then turn to these persons to resolve any questions in their minds as to the applicant's qualifications. If these persons were to disclose information detrimental to petitioner it is unlikely that petitioner would volunteer their names. The information revealed by these questions may show that petitioner has engaged in conduct which justifies his exclusion from the bar. It is also unlikely that petitioner would volunteer this information.

The cases of *Schneider* v. *Smith,* 390, U.S. 17 (1967) and *Shelton* v. *Tucker,* 364 U.S. 479 (1960) cited by petitioner are readily distinguishable from the case at bar. The *Schneider* case involved the Magnuson Act which gave the President authority to issue rules and regulations to safe-

guard vessels in waters subject to the jurisdiction of the United States. This Court held that this Act did not authorize a screening program for personnel on merchant vessels. In this case, it is clear that the State of Ohio has the authority to screen applicants for admission to the bar to insure that they are properly qualified.

The *Shelton* case considered a statute which required every teacher in a state-supported school or college to file annually an affidavit listing every organization to which he had belonged or regularly contributed within the preceding five-year period. The teachers subject to the statute were hired on a year-to-year basis. They were not covered by civil service and had no job security. Under these circumstances a teacher would naturally tend to avoid any group or organization which might displease his superiors. The fact that there was nothing to prevent the information from being made public would increase this tendency. Public exposure could bring public pressure upon school authorities to discharge a teacher. Since these affidavits were required annually, there would be continual pressure on teachers to avoid joining or supporting any controversial groups. This Court, therefore, properly found that because of its interference with associational freedom the statute was invalid.

In this case, none of these factors is present. There is no requirement that an affidavit be filed annually. Neither is there a problem concerning lack of job security. The so-called "chilling effect" on freedom of association is therefore absent here. Applicants are free to join any group they desire. There is nothing in this record to show that mere association in any group would prevent an applicant's admission. The questions involved in this case are designed to reveal background information relevant to a person's qualifications for admission to the practice

of law. There is no other practical way for the committee to obtain such information.

It is not contended that petitioner should be required to disclose any information which might tend to incriminate him. Petitioner has the right to refuse to answer any question on that basis. Petitioner's right to remain silent, however, does not excuse him from satisfying the required standards to be admitted to the practice of law in Ohio. If an applicant can thwart the investigation by his refusal to answer relevant questions, the Supreme Court of Ohio cannot properly determine his qualifications.

> * * * The Court has repeatedly recognized that it is permissible to deny a status or authority to a claimant of the privilege against self-incrimination if his claim has prevented full assessment of his qualifications for the status or authority. Under this rule, the applicant may not both decline to disclose information necessary to demonstrate his fitness, and yet demand that he receive the benefits of the status. He may not by his interjection of the privilege either diminish his obligation to establish his qualifications, or escape the consequences exacted by the State for a failure to satisfy that obligation. *Spevack* v. *Klein*, 385 U.S. 511 at 526 (dissenting opinion by Harlan, J.)

To the same effect see also: *Konigsberg* v. *State Bar of California*, 366 U.S. (1961); *In Re Anastaplo*, 366 U.S. 82 (1961); *Orloff* v. *Welloughby*, 345 U.S. 83 (1963).

The case of *Spevack* v. *Klein*, 385 U.S. 511 (1967), is substantially different from the instant case. That case involved an attorney admitted to the practice of law who refused, on the basis of his privilege against self-incrimination, to answer questions in a disbarment proceeding. There was no independent evidence of misconduct. The state attempted to use his failure to testify as conclusive proof that he was unfit to practice law. This Court held that he could not be disbarred merely for exercising his

constitutional privilege. To hold otherwise would offer the state a dangerous short cut. The burden of proving misconduct in disciplinary proceedings rests with the state. In the instant case petitioner was not being punished for exercising his privilege. However, his failure to provide necessary information prevented the committee from determining whether or not he was properly qualified. Until it could make this determination, the committee could not properly recommend his admission.

The obstruction to the investigation of the committee in the instant case is more significant than that in the *Konigsbery* or *Anastaplo* cases, *supra*. There, the applicants refused to answer questions concerning membership in the Communist Party. Here, petitioner has also refused to name any clubs, societies or organizations of which he is or had been a member. Because of petitioner's refusal to answer these questions the committee was "unable to complete the necessary investigation into his moral and character fitness". (Appendix, p. 27a). As this Court recognized in *Konigsberg* v. *State Bar of California*, 366 U.S. 36 at 46-47, (1961), the requested information may provide a valuable insight into the applicant's character and open new areas of investigation. The crucial point is that because petitioner refused to answer either of the questions, the admissions committee could not make a final determination concerning his character and fitness for admission to the practice of law.

The State of Ohio clearly has a substantial interest in insuring that those persons admitted to practice law in that state possess these required qualifications. The state has no practical means with which to conduct an independent investigation as to each applicant. In order to protect its interest, it must, therefore, have the right to require each applicant to furnish evidence relative to his qualifi-

cations. The State must also have authority to require information concerning matters which may not be volunteered by the applicants and to test the evidence produced by applicant. That is the only issue that is involved in this case.

The State of Ohio is not interested in the political beliefs of its applicants. Neither is it attempting to require any applicant to incriminate himself. It is merely attempting to insure that those persons admitted to the practice of law in Ohio possess the proper qualifications. Applicant contends that had he answered these questions the State of Ohio might have used the information in violation of the Constitution of the United States. There is nothing in the record to support this contention. Applicant is asking this Court to assume, without any basis in the record, that the committee and the Supreme Court of Ohio would act contrary to law. Such an assumption is clearly improper.

The questions involved herein are valid and there is no basis in the record of this case to assume that the information would be used in an unlawful manner. There is, therefore, no reason not to uphold the use of such questions. An applicant has ample protection against the unconstitutional application of the information which he discloses. Any applicant who is unlawfully denied admission to the practice of law has an adequate remedy. Such denial would be subject to review and reversal by this Court. See e. g. *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, (1957); *Konigsberg* v. *State Bar of California*, 353 U.S. 252 (1957). The questions involved herein provide relevant information necessary to determine an applicant's qualifications to practice law. This Court has jurisdiction to provide a remedy if and when the information disclosed by such questions is used in an unlawful manner. Respondents respectfully contend that this Court should, therefore, uphold the use of such questions.

CONCLUSION

The State of Ohio and the people thereof have a substantial interest in insuring that persons admitted to the practice of law in that state possess the required qualifications, including moral qualifications. The State also has authority to investigate and interrogate each applicant in order to determine whether he possesses such qualifications. In the event an applicant fails to answer relevant questions designed to enable the committee to make this determination, he has not only failed to show that he possesses these qualifications but has also prevented the committee from making a adequate determination. He should, therefore, be excluded from the practice unless and until he furnishes such information.

Respectfully submitted,

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APPENDIX A

Art. IV, Sec. 2(B) (1)

(B) (1) The supreme court shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any case on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

APPENDIX B

Art. IV, Sec. 5(B)

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

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JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1969

No. 18

In the Matter of the Application of

MARTIN ROBERT STOLAR,

Petitioner.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

REPLY BRIEF

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Supreme Court of the United States

October Term, 1969

No. 75

In the Matter of the Application of

MARTIN ROBERT STOLAR,

Petitioner.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

REPLY BRIEF

The respondents' brief is a rather puzzling one: (1) it is a confession by avoidance in declining to meet squarely the First Amendment issue presented in the petition for certiorari and in petitoner's brief; (2) it treats the First Amendment obliquely by asserting the relevance of the questions put to applicants; (3) it gives an incredible and self-defeating explanation for the particular questions put to applicants; and (4) it misconstrues the purpose and application in this case of the privilege against self-incrimination.

I.

The Case Directly Involves the First Amendment.

Respondents' only answer to petitioner's principal argument—*i.e.*, based upon his First Amendment rights—is that it was not "properly and timely brought in issue" (Resp. Br. p. 1).[1] Respondents are in error in suggesting that "the

[1] "Resp. Br." refers to respondents' brief; "Pet. Br." to petitioner's brief; "a" to the single Appendix.

Fifth Amendment . . . is the only basis given by petitioner for his refusal to answer the questions involved herein" (Resp. Br. p. 1).

On the contrary, petitioner raised this issue in the Bar admission proceedings on at least three occasions: (1) During the personal interview he stated "that such questions go to matters not properly within the subject matter of such an inquiry" (29a). (2) On February 10, 1969, he was more explicit by writing the committee that his "answers to such questions are protected by the First and Fifth Amendments of the United States Constitution" (31a). (3) On February 24, 1969, his counsel wrote to the Supreme Court of Ohio pointing out that "Mr. Stolar has therefore grounded his refusal to answer the three questions involved on both the First and Fifth Amendments to the Constitution" (44a). That Court rejected those arguments without opinion (55a). Accordingly, the petition for certiorari was based principally on the First Amendment; Ohio did not oppose certiorari upon its present theory; the grant of certiorari was not limited. It is regrettable that the respondents apparently believe that their present position permissibly avoids a direct response to the basic First Amendment argument made in petitioner's brief.

II.

Petitioner's First Amendment Position is Supported by Respondents' Explanation of Their Questions.

While respondents have not adressed themselves directly to petitioner's arguments and to the decisions of this Court upon which petitioner relies, they have done so obliquely by arguing that the state had a legitimate objective. However the nature of their response gives new grounds in support of petitioner's First Amendment position.

Respondents' first claim is that Ohio has a substantial interest in "trustworthy" persons (Resp. Br. p. 3), *i.e.* those with "moral qualifications" (*id.* at p. 4). This is only the beginning of the problem for even a legitimate objective may not constitutionally be achieved by means which "[diminish] the exercise of rights so vital to the maintenance of democratic institutions." *Schneider* v. *State*, 308 U.S. 147, 161; see also *Thornhill* v. *Alabama*, 310 U.S. 88, 96; *United States* v. *Robel*, 389 U.S. 258, 265-268.

Petitioner's principal brief had established three basic respects in which the means used by Ohio violated the rule of precision applicable in First Amendment cases (Pet. Br. pp. 23-37); they need not be repeated here. More fundamentally, respondents fail to meet petitioner's argument (Pet. Br. p. 17) that an applicant's political history bears no reasonable relationship to the valid concern of Ohio for professional trustworthiness and competence. This being so, Ohio's test violates this Court's decision that "a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." *NAACP* v. *Button*, 371 U.S. 415, 439; *Mine Workers* v. *Illinois Bar Assn.*, 389 U.S. 217, 222.

Respondents have given for the first time a most unusual and we think self-defeating explanation for their questioning applicants concerning organizational membership. "The answers *might* disclose the names of associates who have known petitioner intimately for some period of time. The committee could then turn to these persons to resolve any questions in their minds as to the applicant's qualifications" [Resp. Br. p. 6 (italics supplied)]. In short, the reason is not the nature of the organizations, but the possibilities of inquiry of an unlimited number of acquaintances. On this theory, respondents could have adopted the more direct approach of requiring petitioner to name every person whom he had ever known. Ohio's inquiry thus turns out to be a more drastic and sweeping search than the

more limited, although concededly wide ones, found constitutionally defective by this Court in *Shelton* v. *Tucker*, 364 U.S. 479 and *Schneider* v. *Smith*, 390 U.S. 17.

In *Shelton*, an equally unlimited number of organizations was called for—but there was a time limit of five years. Nevertheless, this Court characterized the requirement as "an unlimited and indiscriminate search" (*Schneider* v. *Smith, supra* at 24) of a teacher's associational past. Such a search of "every conceivable kind of associational tie" netting "relationships [which] could have no possible bearing upon the teacher's occupational competence or fitness . . . (*Shelton* v. *Tucker, supra* at 488) goes far beyond which might be justified in the exercise of the state's legitimate inquiry" (*Id.* at 490).

Schneider v. *Smith, supra*, was an inquiry into membership in 250 designated organizations in contrast to the present inquiry which encompasses *any* organization which might ultimately be deemed by the committee to advocate overthrow of the government. Recognizing the infirmities of such an unlimited political inquiry, the Court, in *Schneider* felt compelled to read the statutory delegation involved "narrowly so as to avoid questions concerning 'associational freedom' that *Shelton* v. *Tucker* protected and concerning other rights within the purview of the First Amendment." *Schneider* v. *Smith, supra* at 27.

Factual differences between *Shelton* and *Schneider* and the present one do not make inapplicable the broad principles enunciated by the Court. Respondents argue that the teachers in *Shelton* did not have "tenure" (Resp. Br. p. 3); applicants for the bar are in the same unenviable position . Ohio argues that there is no "chilling effect" because membership in an organization does not necessarily exclude applicants from the bar (Resp. Br. p. 7) this was equally true in *Shelton*.

Further, there are two distinctions between this case and *Shelton* which run in favor of petitioner. In *Shelton* the associational interrogation was found to be relevant to the state's inquiry; it was the sweeping method used that was considered improper. 364 U.S. at 488. In contrast, this case has two defects in addition to the sweeping nature of the questions: irrelevancy and remoteness. Relevance is absent by reason of the lack of connection between moral character and political association, however invidious. See Pet. Br. pp. 17-33. Remoteness exists since "the background information" (Resp. Br. p. 7) at most "*might* disclose names" (italics added) and such a reservoir of names might produce information which might be derogatory. All this despite the fact that the questions call for organizations while the respondents now call for names. In sum, as in *NAACP* v. *Alabama*, 357 U.S. 449 and in *Bates* v. *Little Rock*, 361 U.S. 516, there is here no substantially relevant correlation between the governmental interest asserted and the information which the state compels the applicant to disclose. *Cf. Shelton* v. *Tucker*, *supra* at 485.

Respondents seek to justify their sweeping search with the makeweight argument that "there is no other practical way for the committee to obtain such information" (Resp. Br. p. 7). There are three answers to this claim: first, as shown in our principal brief, Ohio is not entitled to such information, regardless of the means used; second, the state is required to use methods not in violation of constitutional rights even though they require some financial expense. *Cf. Griffin* v. *School Board*, 377 U.S. 218, 233; *Bloom* v. *Illinois*, 391 U.S. 194; *United States* v. *School District 151 of Cook County, Illinois*, 301 F. Supp. 201, 232 (N. Dist. Ill. 1969); third, the states have access to the inexpensive investigating facilities of the National Conference of Bar Examiners. See discussion in *Application of Burke*, 351 P. 2d 169 (Ariz. 1960); Farley, *Character Investigation of Applicants for Admission*, 24 Bar. Exam. 147 (1955).

The respondents raise an unreal issue when they suggest that applicants "assume" that the committee and the court below would abuse their discretionary powers (Resp. Br. p. 10). Petitioner's First Amendment rights may not be made to depend upon the good faith or self-restraint of the respondents. See *Baggett* v. *Bullitt*, 377 U.S. 360, 373-374. The unfortunate history of repression against members of the Bar for political dissent [2] teaches that like prosecutors, those in charge of regulating the Bar, too, are human. See *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 286-287.

Nor does the availability of review in this Court of unlawful exclusion from the Bar diminish or justify the threat to the exercise of First Amendment rights posed by the Ohio screening program. See *Dombrowski* v. *Pfister*, 380 U.S. 479, 486, 494; *Baggett* v. *Bullitt*, *supra*, at 378-379. Moreover, delays, which in some cases have involved many years of litigation (see *Konigsberg* v. *State Bar*, 366 U.S. 36; *In re Anastopolo*, 366 U.S. 82) and the inevitable notoriety preceding vindication of an applicant's First Amendment rights in this Court will "itself effect the impermissible chilling of the very constitutional rights" sought to be protected. *Zwickler* v. *Koota*, 389 U.S. 241, 252.

Thus what is relevant here is not alone the question of how the respondents will treat the petitioner but the effect of Ohio's program upon the young men and women in colleges and law schools who, knowing of Ohio's program, will refrain from legitimate political activity. See *e.g.*, *Speiser* v. *Randall*, 357 U.S. 513, 526. The mere existence of an investigational apparatus which, because of its imprecision "lends itself to selective enforcement"

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[2] See, *e.g.* Brown and Fassett, *Loyalty Tests for Admission to the Bar*, 20 U. Chi. L. Rev. 480, 495-496 (1963); 1 Emerson, Haber and Dorsen, *Political and Civil Rights in the United States*, 263-283 (1967); Countryman and Finman, *The Lawyer in Modern Society* (1966).

or "is susceptible of sweeping and improper application" will not be tolerated, even in its dormant state, in the area of First Amendment freedoms. *NAACP* v. *Button*, *supra*, at 433, 435; see also *Whitehill* v. *Elkins*, 389 U.S. 54, 61-62; *Smith* v. *California*, 361 U.S. 137, 151; *Speiser* v. *Randall*, 357 U.S. 513, 526.

III.

Petitioner's Assertion of the Privilege Against Self-Incrimination is a Legitimate Bar to the Inquiry.

Respondents' argument that the compelled disclosure does not "require any applicant to incriminate himself" (Resp. Br. p. 10) overlooks a series of cases under the Smith Act, 18 U.S.C. 2385, ranging from *Dunne* v. *United States*, 138 2d 137 (8th Cir. 1943), *cert. denied*, 320 U.S. 790, through *Dennis* v. *United States*, 341 U.S. 494, to *Scales* v. *United States*, 367 U.S. 203.

Respondents assume incorrectly that petitioner's reliance upon the privilege is based exclusively upon the use of the information in the bar admission proceedings (Resp. Br. p. 10); instead, the privilege is asserted because such information can be used in proceedings *dehors* the instant one.

This Court's most recent decision on the subject in *Spevack* v. *Klein*, 385 U.S. 511, cannot be distinguished from the instant case upon the basis of respondents' arguments (Resp. Br. p. 8). "There is no independent evidence of misconduct" (*ibid*) here any more than in *Spevack*. Petitioner is no more a governmental employee than was Mr. Spevack. And as in *Spevack* the burden of proof in a Bar admission case is on the state where First Amendment rights are involved. See *Speiser* v. *Randall*, *supra*.

Nor are the other cases relied upon by the respondents apposite. In neither *Konigsberg* v. *State Bar of California,* 366 U.S. 36, nor *In re Anastaplo,* 366 U.S. 82, was the privilege asserted by the applicant. *Orloff* v. *Willoughby,* 345 U.S. 83, was an unusual case involving the right of a military commission and duties in the Army. In the light of the dissenting opinions in *Orloff* as well as the majority opinions in *Spevack,* it may be doubted that this Court would come to the same conclusion today.

Finally, it may be noted that even if the petitioner were regarded as a government employee, the broad questions put to the petitioner do not involve the narrow questions relating to one's job performance, upheld by this Court in *Uniformed Sanitation Men Association, Inc.* v. *Commissioner of Sanitation,* 392 U.S. 280.

CONCLUSION

The order below should be reversed with instructions to admit petitioner to the Ohio Bar Examination.

Respectfully submitted,

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December 5, 1969

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 18.—OCTOBER TERM, 1970

In the Matter of the Application of Martin Robert Stolar.	On Writ of Certiorari to the Supreme Court of Ohio.

[February 23, 1971]

MR. JUSTICE BLACK announced the judgment of the Court and delivered an opinion in which MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL join.

This is the second of two cases* involving the refusal of States to admit applicants to practice law because they declined to answer questions relating to their beliefs about government and their affiliations with organizations suspected of advocating the overthrow of government by force. These cases, which concern inquisitions about loyalty and government overthrow, are relics of a turbulent period known as the "McCarthy era," which drew its name from Senator Joseph McCarthy from Wisconsin. We have just referred in our opinion in *Sara Baird* v. *State Bar of Arizona* to the confusion and uncertainty created by past cases in this constitutional field. The central question in all of them has been the same, whether involving lawyers, doctors, marine workers, or State and Federal Government employees: namely, to what extent does the First or Fifth Amendment or other constitutional provision protect persons against governmental intrusion and invasion into private beliefs and views that have not ripened into any punishable conduct. Without attempting in that case to bring about a com-

*The other is No. 15, *Sara Baird* v. *State Bar of Arizona*, *supra*. Cf. No. 49, *Law Students Civil Rights Research Council, Inc.* v. *Wadmond*.

plete reconciliation of all that this Court has previously said about this particular phase of First Amendment protection, we held that under the circumstances present there, Mrs. Baird could not, consistently with the First Amendment, be denied a state license to practice law because she refused to state whether she had belonged to the Communist Party or any organization that advocated overthrow of the United States Government by force. Here we hold that Stolar's refusals to answer certain questions asked him by the Ohio Bar Committee were also protected by the First Amendment.

The facts are these: Stolar, whose home is in Rochester, New York, has an A. B. degree from the University of Rochester and received a LL. B. degree from New York University Law School in 1968. The dean of that school has certified that Stolar has received instructions in legal ethics, has a good moral character, and has sufficient knowledge and ability to discharge the duties of an attorney at law. He has a license to practice law in New York State. To become a member of the New York Bar, Stolar was asked and answered the following questions along with many others:

"18. State whether you have participated in activities of a public or patriotic nature or in philanthropic, religious, or social services? If so, state the facts fully.

"*I was a Cub Scout and Boy Scout and Explorer Scout during elementary and high school.*

"*I also participated fully in my Temple's religious education programs until I went to college.*

"*In addition, my time spent as a VISTA is a service of the above described nature.*

"19. Do you believe in the principles underlying the form of government of the United States? *Yes.*

"20. *State whether you have been or are a member of any party or organization engaged in propa-*

gating or pledged to effect changes in the form of government provided for by the United States Constitution, or in advancing the interests of a foreign country? If so, state the facts fully. *No.* (Emphasis supplied.)

"21. Can you conscientiously, and do you, affirm, without any mental reservation, that you have been and are loyal to the Government of the United States? *Yes.*

. . . . .

"24. (a) Have you studied the Canons of Ethics adopted by the American Bar Association? *Yes.*

"(b) Do you unconditionally subscribe to the same? *Yes.*

"(c) Will you conscientiously endeavor to conform your professional conduct to them? *Yes.*"

In 1969 Mr. Stolar applied to the Ohio Bar for admission to practice. He made available to Ohio all the information he had previously given the New York Bar Committee, including his answers to the New York questions stated above. Stolar then answered a long series of questions posed by the Ohio committee. In response to oral interrogation he stated:

> "that he is not now and never has been a member of the Communist Party, or any socialist party, or of the Students for Democratic Society and . . . that he has signed the standard U. S. Army preinduction security oath which has reference to the 'Attorney General's List.'"

However, Stolar declined to answer certain questions on the Ohio application on the grounds they infringed his rights under the First and Fifth Amendments. These questions were:

> "12 (g). State whether you have been, or presently are . . . a member of any organization which

advocates the overthrow of the government of the United States by force . . . .

"13. List the names and adresses of all clubs, societies or organizations of which you are or have been a member.

"7. List the names and addresses of all clubs, societies or organizations of which you are or have become a member since registering as a law student."

Because of his refusal to answer these questions, one member of the committee who investigated Stolar recommended that he be denied admission. The other stated:

"I found Mr. Stolar to be honest and forthright. His statements evidenced also a certain commitment to principle for its own sake, an unusually great amount of social awareness, and a degree of self-interest not reprehensible. On the basis of the interview and the background actually revealed in Mr. Stolar's applications I have no reluctance to recommend Mr. Stolar for admission to the practice of law."

The full committee then recommended that petitioner's application to take the Ohio Bar examination be denied. The Ohio Supreme Court approved the committee's recommendation without opinion. We granted certiorari. 396 U. S. 816.

We deal first with Ohio's demands that petitioner Martin Stolar list all the organizations to which he has belonged since registering as a law student and those of which he has been a member since the age of 16. In our view requiring a Bar applicant to answer these questions is impermissible in light of the First Amendment, as was made clear in *Shelton* v. *Tucker*, 364 U. S. 479 (1960). At issue in *Shelton* was an Arkansas statute that required every state teacher, as a condition of employment, to file an affidavit listing every organization to which he had belonged within the preceding five years. The Court

noted that this requirement impinged upon the teacher's right to freedom of association because it placed "pressure upon a teacher to avoid any ties which might displease those who control his professional destiny . . . ." *Id.*, at 486. Similarly here, the listing of an organization considered by committee members to be controversial or "subversive" is likely to cause delay and extensive interrogation or simply denial of admission to the Bar. Repondent committee frankly suggests that the listing of an organization which it felt "espoused illegal aims" would cause it to "investigate further." Law students who know they must survive this screening process before practicing their profession are encouraged to protect their future by shunning unpopular or controversial organizations. Cf. *Speiser* v. *Randall*, 357 U. S. 513 (1958).

The committee suggests its "listing" question serves a legitimate interest because it needs to know whether an applicant has belonged to an organization which has "espoused illegal aims" and whether the applicant himself has espoused such aims. But the First Amendment prohibits Ohio from penalizing an applicant by denying him admission to the Bar solely because of his membership in an organization. *Baird* v. *State Bar of Arizona*, *supra; cf. United States* v. *Robel*, 389 U. S. 258, 266 (1967); *Keyishian* v. *Board of Regents*, 385 U. S. 589, 607 (1967). Nor may the State penalize petitioner solely because he personally, as the committee suggests, "espouses illegal aims." See *Cantwell* v. *Connecticut*, 310 U. S. 296, 303–304 (1940); *Baird* v. *State Bar of Arizona*, *supra.*

The committee also argues it needs answers to questions 7 and 13 because responses might direct its attention to persons who have known an applicant and who could supply information relevant to his qualifications. Undoubtedly Ohio has a legitimate interest in determining whether an applicant has "the qualities of character and the professional competence requisite to the practice

of law." *Baird* v. *State Bar of Arizona, supra.* But petitioner Stolar, already a member in good standing of the New York Bar, supplied the Ohio committee with extensive personal and professional information as well as numerous character references to enable it to make the necessary investigation and determination. Moreover, even though irrelevant to his fitness to practice law, Stolar's answers to questions on the New York application provided Ohio with substantially the information it was seeking by questions 7, 12 (g), and 13. The information contained in the two applications included petitioner's law school; every address at which he had ever lived; the names, addresses, and occupations of his parents; the names and addresses of his elementary school, his high school and high school principal; the names of nine former employers (which included three different law firms for which he had done summer work); his "criminal record" (which consisted of two speeding convictions); nine different people as character references (two of whom had known Stolar for more than 20 years); and extensive infomation about his previous activities (*e. g.*, law school moot court, graduate advisor at N. Y. U., Cub Scout, Boy Scout, Explorer Scout, and his Temple's religious education programs.)

We conclude also that Ohio may not require an applicant for admission to the Bar to state whether he has been or is a "member of any organization which advocates the overthrow of the government of the United States by force." As we noted above, the First Amendment prohibits Ohio from penalizing a man solely because he is a member of a particular organization. See also *Baird* v. *State Bar of Arizona, supra.* Since this is true, we can see no legitimate state interest which is served by a question which sweeps so broadly into areas of belief and association protected against government invasion.

Cantwell v. *Connecticut*, 310 U. S. 296, 303–304 (1940); *United States* v. *Robel*, 389 U. S. 258, 266 (1967); *Keyishian* v. *Board of Regents*, 385 U. S. 589, 607 (1967); *Baird* v. *State Bar of Arizona*, *supra*; *Baggett* v. *Bullitt*, 377 U. S. 360 (1964).

There is not one word in this entire record that reflects adversely on Mr. Stolar's moral character or his professional competence. Although there were three questions that he did not answer with a simple "yes" or "no," he did answer all of the Committee's questions relevant to his fitness and competence to practice law. It is difficult if not impossible to see how the State of Ohio could have been obstructed or frustrated to any extent in determining Mr. Stolar's fitness to practice law by his failure to answer the questions more fully. The record shows a young man who, from his boyhood up, had no adverse marks except for two speeding convictions. He answered numerous prying questions about personal affairs that could hardly have been necessary for a State interested only in whether he would make an honest lawyer faithful to his clients. The questions he did not answer related only to his beliefs and associations, both protected by the First Amendment. The State points to not one overt act on Stolar's part that even suggests a possible reason for denying his application. Here, as in *Baird* v. *Arizona State Bar*, it was a denial of a Bar applicant's First Amendment rights to refuse him admission simply because he declined to answer questions about his beliefs and associations.

The judgment of the Ohio Supreme Court is reversed and the case remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

For opinion of MR. JUSTICE WHITE dissenting in this case see No. 15.

SUPREME COURT OF THE UNITED STATES

No. 18.—October Term, 1970

In the Matter of the Application of Martin Robert Stolar.	On Writ of Certiorari to the Supreme Court of Ohio.

[February 23, 1971]

Mr. Justice Stewart, concurring.

Ohio's questions 7 and 13 are plainly unconstitutional under *Shelton* v. *Tucker*, 364 U. S. 479. In addition, question 12 (g) suffers from the same constitutional deficiency as does Arizona's question 27 in *Baird* v. *State Bar of Arizona*, *ante*. For these reasons I agree that the judgment before us must be reversed.

SUPREME COURT OF THE UNITED STATES

No. 18.—October Term, 1970

In the Matter of the Application of Martin Robert Stolar.	On Writ of Certiorari to the Supreme Court of Ohio.

[February 23, 1971]

Mr. Justice Blackmun, with whom The Chief Justice, Mr. Justice Harlan, and Mr. Justice White join, dissenting.

This case, also argued here for the second time, presents another instance of a well-educated (academic degree from the University of Rochester; law degree from New York University) and obviously able young person who seeks admission to the Bar, but, to an extent at least, upon his own terms. His case is made the more acute and appealing because he already has been admitted to practice in the State of New York but now finds himself thwarted in a like endeavor in Ohio. The decisions in *Konigsberg* v. *State Bar of California*, 366 U. S. 36 (1961), and *In re Anastaplo*, 366 U. S. 82 (1961), are again challenged.

The Court in its opinion has set forth the pertinent questions asked of Martin Robert Stolar, when he sought admission to the New York Bar in 1968, and Stolar's answers to those questions. At that time he was willing to go so far as specifically to profess even his *belief* in the principles underlying the form of government of the United States and his loyalty to that government, and also, just as specifically, to go so far as to deny that he was, or ever had been, a member of any party or organization pledged to effect changes in the form of our government or engaged in advancing the interest of a foreign country. The propriety of these very questions,

which Stolar answered apparently without hesitation in New York in 1968, was seriously questioned subsequently in *Law Students Civil Rights Research Council, Inc.* v. *Wadmond*, 299 F. Supp. 117, 130 (SDNY 1969), now affirmed, *infra*, p. ——.

In 1969, in Ohio, Stolar apparently again had no hesitation in professing at oral interview that he was not, and never had been, a member of the Communist Party. But, although the one seems to include the other, he flatly refused, on stated Fifth Amendment grounds, to say (Question 12 (g)) whether he was or had been a member of any organization which advocates the overthrow of the Government of the United States by force. He also refused, on Fifth Amendment grounds, to list (Questions 13 and 7) organizations of which he was or had been a member.

I may assume, for present purposes, that the general and broadly phrased list-your-organizations inquiries, that is, Questions 13 and 7, are improper and impermissible under the Court's holding, by another five-to-four vote, in *Shelton* v. *Tucker*, 364 U. S. 479 (1960), despite the presence of what seems to me to be a somewhat significant difference between nontenured school teachers and about-to-be-licensed attorneys. This assumption, however, does not terminate Stolar's case for Question 12 (g), with its specific inquiry about membership in organizations advocating overthrow by force, remains to be considered.

My position with respect to a refusal to respond to a question such as Question 12 (g) is set forth in my dissent in *Baird* v. *State Bar of Arizona, ante*, p. ——, and needs no detailed repetition here. I note only (a) the inconsistency of Stolar's willingness to respond orally and his unwillingness to respond in writing, and (b) that, here again, membership, present or past, in an organization of the kind specified, although relevant in the Bar

admission context, in and of itself is not conclusive upon the issue of admission to the Bar. Ohio concedes, as Arizona did in *Baird*, that the significance lies in something more than mere membership.

Neither am I content to conclude, as the majority seems to be, that Stolar's responses to New York in 1968 should suffice for responses to Ohio in 1969. That kind of reasoning would compel one to conclude that because an applicant is admitted to the Bar of one State, he surely must be admitted to the Bar of any other State. We might reach that frontier one day on some new and as yet undeveloped constitutional concept, but I doubt whether we have reached it yet. New York's range of inquiry and her area of particular interest may very well differ from Ohio's, and each may be constitutionally permissible. Further, an answer true in 1968 may not be true at all in 1969. Time passes and changes can take place even within a few months.

Although I readily concede that the Ohio question (just as the Arizona question in *Baird*) could have been better phrased, the majority's approach to the inquiry is, I feel, somewhat unrealistic. As in *Baird*, and as noted above, it is not a mere question of membership present or past. It is a question of knowing membership and of willingness to participate in the forceful destruction of government. This is the crux. To forestall inquiry at the threshold stultifies Ohio's appropriate concern as to faithful adherence to a lawyer's trust when the State is about to vest great professional and fiduciary power upon those who seek entrance to the Bar.

On this record, I would affirm.

SUPREME COURT OF THE UNITED STATES

Nos. 15, 18, & 49.—October Term, 1970

Sara Baird, Petitioner, v. State Bar of Arizona. (15)	On Writ of Certiorari to the Supreme Court of Arizona.
In the Matter of the Application of Martin Robert Stolar. (18)	On Writ of Certiorari to the Supreme Court of Ohio.
Law Students Civil Rights Research Council, Inc., et al., Appellants, v. Lowell Wadmond et al. (49)	On Appeal From the United States District Court for the Southern District of New York.

[February 23, 1971]

Mr. Justice Harlan, concurring in No. 49, and dissenting in Nos. 15 and 18.

In joining Mr. Justice Stewart's opinion for the Court in the *Wadmond* case, No. 49, *ante*, —, and Mr. Justice Blackmun's dissenting opinions in the *Baird* and *Stolar* cases, Nos. 15 and 18, *ante*, — and —, I am constrained to add these remarks.*

My Brother Black's opinion announcing the judgments of the Court in the *Baird* and *Stolar* cases, and his dissenting opinion in the *Wadmond* case, could easily leave the impression that these three States are denying Bar admission to professionally qualified candidates solely by reason of their membership in so-called subversive organizations, irrespective of whether that membership is born

*While petitioners in Nos. 15 and 18 have also sought to assert Fifth Amendment claims against self-incrimination, today's opinions have treated all the cases only in terms of First Amendment considerations, and I too shall proceed on that basis.

of a purely philosophical cast of mind or of a specific purpose to engage in illegal action, or that these States are at least trying to discourage prospective Bar candidates from joining such organizations. In the latter respect, my Brother MARSHALL's opinion seems to me to lend itself to a similar interpretation. If anything in these records could fairly be taken as pointing to either such conclusion, I would be found on the "reversing" side of these cases. The records, however, adumbrated by the representations of the responsible lawyers who appeared for the States, in my opinion belie any such inferences. They show no more than a refusal to certify candidates who deliberately, albeit in good faith, refuse to assist the Bar-admission authorities in their "fitness" investigations by declining fully to answer the questionnaires.

I could hardly believe that anyone would dispute a State's right to refuse admission to the Bar to an applicant who avowed or was shown to possess a dedication to overthrowing governmental authority by force or to supplanting the rule of law by incitement to individual or group violence as the best means of attaining desired goals. One could question the efficacy or wisdom of questionnaires of the kind involved in these cases as a means of weeding out occasional misfits from the general run of Bar candidates, or criticize as unduly complicated or pervasive some aspects of such questionnaires. And one may also be understanding of the considerations which in this day and age breed lawsuits like these. But we should nonetheless take care lest the indulging of such points of view lead us into warped constitutional decision.

In my opinion the course chosen by these States cannot be said to be forbidden by the Constitution. I do not consider that the "less drastic means" test which has been applied in some First Amendment cases, see *NAACP v. Alabama*, 377 U. S. 288, 307–308 (1964), and cases cited therein, suffices to justify this Court in assuming general

oversight of state investigatory procedures relating to Bar admissions. Nor do I think that the questioning of candidates as to their beliefs in violent overthrow necessarily runs afoul of true First Amendment concerns. I do not dispute that the First Amendment, as reflected in the Fourteenth, prevents States from denying admission to candidates merely because of theoretical beliefs in the "right" of revolution, but I do maintain that there is no constitutional barrier to denying admission to those who seek entry to the profession for the very purpose of doing away with the orderly processes of law, and that temperate inquiry into the character of their beliefs in this regard, which is all that is shown here, is a relevant and permissible course to that end. It seems to me little short of chimerical to suggest that the independence of the Bar is threatened unless this Court steps in and puts a constitutional end to such a practice. Cf. *Bates* v. *Little Rock*, 361 U. S. 516 (1960); *Barenblatt* v. *United States*, 360 U. S. 109 (1959).

While I hope that I am no less sensitive than others on the Court to First Amendment values, I must say that the pervasive supervision over state Bar admission procedures which is now asked of us would work a most extravagant expansion of the current "chilling effects" approach to First Amendment doctrine. Knowing something of the great importance which the New York Bar attaches to the independence of the individual lawyer, I have little doubt but that the candidates involved in *Wadmond* will promptly gain admission to the Bar if they straightforwardly answer the inquiries put to them without further ado. And I should be greatly surprised if the same were not true as to Mrs. Baird and Mr. Stolar in Arizona and Ohio. But if I am mistaken and it should develop that any of these candidates are excluded simply because of unorthodox or unpopular beliefs, it would then be time enough for this Court to intervene.